

A.K. Corpn. Ltd. Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-18-2005

Judge : R Gupta, C Rao

Appellant : A.K. Corpn. Ltd.

Respondent : ito

Judgement :

1. This is an appeal by the assessee against the order of the Commissioner (Appeals) relating to assessment year 1996-97.

2. The assessee is objecting in confirming share trading loss of Rs. 10,61,038 as its speculation loss, ignoring the fact that Section 73 was not applicable in the present case. The assessee is also objecting in confirming disallowance of compensation payment of Rs. 1,10,87,000 paid to Sh. T.K. Lalwani & others on the ground that it pertains to the assessment year 1995-96 and not to the current assessment year 1996-97.

The assessee also filed additional ground vide application dated 24-4-2005. The following additional grounds were raised by the assessee: "That in the case of assessing officer's contention is accepted and compensation of Rs. 1,10,87,000 is considered to be pertaining to assessment year 1995-96 on the ground that the letter for cancellation of the MOU for sale of office premises and payment of compensation is dated 30-3-1995, then a specific direction be given to the assessing officer to allow deduction for such compensation in the assessment

year 1995-96.

That accordingly, applying the same logic, the profit on sale of the two flats viz. A1 and B2 should also be excluded from the income of assessment year 1996-97 and considered in assessment year 1995-96 instead, since the agreements for sale of these two flats is also dated 30-3-1995 ie., the date on which the compensation was agreed upon and a suitable direction be given to the assessing officer." 3. These additional grounds were admitted by the Tribunal by passing an interim order on 6-6-2005, copy of which is placed on record.

4. The assessment in this case was completed under section 143(3)/147.

The original assessment was completed and thereafter the assessing officer noticed that the assessee has claimed a loss in shares of Rs. 10,61,038 which is not allowable. Therefore, notice under Section 148 of the Act was issued on the assessee and notice under Section 143(1)/ 143(2) was issued for completion of the assessment. The assessee was required to explain that how the loss claimed by the assessee is allowable as business loss as in view of the Explanation to Section 73, the loss claimed by the assessee has to be treated as speculation loss in nature. The reply was filed by the assessee. After considering the explanation and other relevant material on record, the assessing officer was of the view that the Explanation to Section 73 is applicable on the facts of the present case. Therefore, the speculation loss of Rs. 10,61,038 from share trading which was set off against the other income and the same is not allowable. Accordingly the same was disallowed.

5. During the assessment proceedings, the assessing officer has also noticed that in the P&L account filed along with the return of income filed on 28-12-1998 the assessee has shown profit of Rs. 1, 13,06,285 on sale of two flats. The assessing officer further noticed that the assessee had debited to P&L account Rs. 1, 10,87,000 on account of compensation paid by the assessee to someone. The assessee was required to explain that how the compensation paid is allowable as deduction. It was explained that vide Memorandum of Understanding (MOU) dated 4-5-1994, the assessee had sold for Rs. 2 crores the office premises out of block assets on which depreciation was being claimed at 4 AX House to Sh. K. Lalwani

and others. It was noticed by the assessing officer that neither the agreement of sale was entered into nor it was registered with the Registrar. No short term gain on account of depreciation assets was offered to tax in the assessment year 1995-96.

It was further explained to the assessing officer that the above said MOU was cancelled vide letter dated 30-3 -1995 and in lieu of cancellation of MOU a lump sum compensation of Rs. 1,10,00,000 was agreed to be paid to Sh. T.K. Lalwani and others. Out of the compensation payable a sum of Rs. 42 lakhs has to be adjusted against the proposed sale of Flat Nos. A I and B2 sold at Great Eastern Royale Building and the balance was paid by cheque on the same date.

Thereafter the assessee was required to explain that how the compensation which pertaining to assessment year 1995-96 is allowable in the current year and why the same shall not be disallowed. In response to this, the assessee vide its letter dated 16-12-2003 submitted as under: "With reference to your query, why the compensation of Rs. 1.10 crores should not be accounted during the previous year relevant to assessment year 1995-96, we submit that we agreed to settle the dispute, regarding the sale of office premises at Ist for on 30-3-1995. But the said settlement was subject to the sale and transfer of two flats in the Great Eastern Royale Building, Tardeo.

On 30-3-1995, it was agreed between two parties to settle the dispute and the same subject to the fulfilment many other conditions like: MOU was also signed.

(i) Obtaining 371 Clearance in respect of said flats, which we obtained only on 29-5-1995.

(ii) Balance payment of Rs. 68.00 lakhs which was paid in the month of May, 1995.

(iii) Handing over of the possession of flats on financial year 1995-96 and execution of transfer papers.

Without prejudice to the above contention, if the compensation was to be accounted during the previous year relevant to assessment year 1995-96 as per your Honour's argument, the income in respect of sale of said flats also should be

accounted in the said assessment year, ie.

Assessment Year 1995-96 as the MOU between two parties for the sale of flats was entered on 30-3-1995,ie. the date on which we agreed to settle the dispute."

6. After considering the submissions, the assessing officer found that the assessee had paid compensation of Rs. 1,10,00,000 as per letter dated 30-3-1995 which pertains to assessment year 1995-96. Since the assessee follows mercantile system of accounting, the compensation payable becomes due on 30-3-1995 and not in the current year. Hence, it was held that the same was not allowable to be set off against the income for the current year ie., assessment year 1996-97. The assessing officer further observed in his order that without prejudice to the above, the party Sh. T.K. Lalwani to whom the assessee had claimed to be paid the compensation had denied any transaction with the assessee vide letter dated 17-10-2003 and 25-1-2003 which was received by the assessing officer in response to summons issued under Section 131 of the Act. It was further noted by the assessing officer that as per letter dated 30-3-1995 the compensation was payable was at Rs. 1.10 crores whereas the assessee had claimed at Rs. 1,10,87,000 in P&L Account. From this act of the assessee, the assessing officer inferred that the assessee had tried to reduce the income chargeable to tax by way of inflating the expenses and by way of claiming of expenses which are not allowable. The assessee's claim that the sale of flats had also to be considered in assessment year 1995-96 on the basis of MOU dated 30-5-1995 if the compensation is considered for assessment year 1995-96 was also not accepted by the assessing officer against the sale of flat at Great Eastern Royale Building were sold in the assessment year 1996-97 as certificate under Section 269UL(3) was issued on 30-5-1995 by the appropriate authorities regarding sale of these flats.

Similarly, it was held by the assessing officer that from these flats it is clearly shown that the sale of the abovesaid flats had taken during the assessment year 1996-97. The assessing officer also observed that the office premises was capital asset and the compensation paid for capital asset is not a business loss and hence not liable to set off against the business income in the earlier assessment year also.

Accordingly, the claim of the assessee negated and the income of the assessee computed at Rs. 1,37,22,930 against the total income declared by the assessee at Rs. 135 5,590. The assessee preferred appeal before the Commissioner (Appeals). Detailed submissions were filed before the Commissioner (Appeals). After considering the submissions and perusing of other relevant materials on record, the Commissioner (Appeals) was in agreement with the findings of the assessing officer in regard to both the issues. Therefore, he confirmed the action of the assessing officer on both the issues.

7. Now, the assessee is in appeal before the Tribunal against the order of the Commissioner (Appeals). The learned Counsel for the assessee filed copy of detailed submissions and a copy of the same has been given to the learned Departmental Representative. Further, reliance was placed on the decisions mentioned in the written submissions and also on the decision in the case of *Malatlal Holdings Ltd. v. Addl. CIT (2004) 85 TTJ (Mum.) 821*. The learned Counsel for the assessee invited our attention on various paragraphs of the written submissions and various ratios of the decisions recorded in the written submissions and it was pleaded that both the authorities were not justified in negating the claim of the assessee. It was further stated that from the very beginning the assessee is showing the purchase of shares under the head 'investment'. Attention of the Bench was also drawn on the copies of the Balance Sheet of various years placed on record. It was further added that the assessment for assessment years 1994-95 and 1995-96 were completed under Section 143(3)/147 and the assessing officer had accepted the capital gain shown by the assessee on account of investment himself. The attention of the Bench was drawn on the copy of the P&L Account as well as copies of the order which are placed on record. It was further submitted that in the subsequent year also similar treatment was given by the assessee and loss claimed on account of sale of investment of shares has been accepted by the department while passing the assessment under Section 143(1), copies of the same are placed on record. It was further submitted that in the case of *Malatlal Holdings Ltd. (supra)*, the Mumbai Bench 'C' of the Tribunal has accepted the contention of the assessee that assessee being an investment company has indulged in business activities by making investment in shares and sale of those investments are part of business activity of the assessee.

Therefore, it was pleaded that whatever be the profits and loss are incurred on account of sale and investment of shares has to be treated on account of business activity of the assessee. Therefore, the claim of the assessee is allowable.

Accordingly it was submitted that Explanation to Section 73 are not applicable on the facts of the case and, therefore, both the authorities were not justified in rejecting the claim of the assessee.

8. Regarding other issues, i.e., deduction on account of compensation paid by the assessee, it was submitted that the assessee has shown profit on account of sale of two flats which in fact was not sold by the assessee which were given to T.K. Lalwani on account of cancellation of MOU entered by the assessee for selling the office premises to Sh. T.K. Lalwani. The assessee could not vacate the office premises up to 31-3-1995, therefore, it was thought proper that the MOU should have cancelled so that the legal action which could have been taken by Sh. T.K. Lalwani can be stopped. In lieu of cancellation of MOU against which the assessee has already received a sum of Rs. 2 crores from Sh. T.K. Lalwani and offered sales of two flats vide letter dated 30-3-1995 which was accepted by Mr. Lalwani. The sale consideration of those flats were agreed at Rs. 1.43 lakhs each and Rs. 42 lakhs were to be adjusted against the sale consideration of these two flats and the remaining amount of Rs. 68 lakhs was paid by the assessee vide cheque dated 15-5-1995. In this way a sum of Rs. 3,54,00,000 was paid by the assessee to Sh. Lalwani. Therefore, there was a loss of Rs. 1,10,87,000 on this deal which has been claimed by the assessee. It was further explained that any loss on account of sale of business assets suffered by the assessee is allowable as business loss. In this regard, reliance was placed on various decisions in *Dalmia Jain & Co. Ltd. v. CIT (SC)*, *Indian Copper Girdharilal (1981) 127 ITR 800 (All.)*, *CIT v. Delhi Safe Deposit Co.*

Ltd. (SC) and *J.K. Commercial Corpn. Ltd v. CIT Sri Lalwani* had denied any agreement with the assessee, it was submitted that it is totally wrong on the part of the assessing officer because the assessee was never confronted with letter received from Sh.

T.K. Lalwani and no proper opportunity has been given to the assessee to explain his side. Therefore it was pleaded that no cognizance can be taken on the letter received from Sh. Lalwani as the assessee was not allowed cross-examination. In support of this contention, the learned Counsel for the assessee has placed reliance on the decision of the Supreme Court in the case of Kishinchand Chellaram v. CIT and other decisions in Hirji Nagji & Co. v. CIT ITR 209 (sic) and CIT v. Eastern Commercial Enterprises (1994) 210 ITR 103 (Cal.). Regarding the difference in amount of Rs. 1,10,00,000 agreed to by letter 30-3-1995 and Rs. 1,10,87,000 actually paid, it was pleaded that in fact the assessee had incurred loss on account of compensation paid at Rs. 1,10,87,000. Therefore, the entire loss has to be allowed as business loss. The attention of the Bench was drawn on the details of compensation paid, incorporated in the written submission at page 14 of the same. Accordingly, it was submitted that the claim of the assessee is allowable. In last, it was submitted that the assessing officer has treated the sum as pertaining to assessment year 1995-96. It was submitted that both the transactions i.e., agreement of sale of office premises and then cancellation of sale of office premises and in lieu of cancellation of sale of office premises, the assessee has offered sale of two flats i.e., A I and B2 situated in the complex of Great Eastern Royale in the same year i.e., assessment year 1995-96. As formalities in regard to transfer of these two flats were completed in assessment year 1996-97, therefore, the assessee has shown profit on account of sale of flats in assessment year 1996-97 and, accordingly, the loss on account of compensation paid to Sh.

Lalwani is also claimed in assessment year 1996-97. Both the transactions are inextricably linked to each other and, therefore, cannot be separated for different purpose. Accordingly, it was submitted that assessing officer was not correct in not accepting the facts that capital gain on account of sale of flats at Rs. 1, 13,06,285 which arose during the assessment year 1996-97 and the loss accrued to the assessee on account of compensation paid to Sh. Lalwani at Rs. 1, 10,87,000 was on the same account and, therefore, the same is allowable in the assessment year 1996-97. The assessing officer has taxed the capital gain at Rs. 1, 13,06,285 in the year in which the same is disclosed i.e., assessment year 1996-97. However, the assessing officer rejected the claim of compensation paid by the assessee

which was inextricably linked with the profits earned on account of sale of two flats. Accordingly, it was submitted that the action of the assessing officer was not justified. It was however, submitted that if the assessing officer wants to reject the claim on account of compensation on the reasoning that the same pertained to assessment year 1995-96 then on the same reasoning the profit against the sale of 2 flats has to be reduced from the profit of the year under consideration. It was also clarified that as per the MOU the sale of flats was taken as completed on the day on which the clearance has obtained from the appropriate authorities under Section 269UL of the Act. The clearance was obtained in the month of May 1995. Therefore, the sale was shown in the assessment year 1996-97 and, accordingly, the compensation paid by the assessee to Sh. Lalwani was also taken into consideration for assessment year 1996-97. Therefore, it was pleaded that the claim of the assessee should be allowed in the year under consideration and if not then the profit shown on account of sale of 2 flats also be directed not to take into consideration for the year under consideration as undisputedly the sale of these flats were agreed vide letter dated 30-3-1995 addressed to Sh. Lalwani which was accepted by Sh. Lalwani. It was further clarified that Form 37-1 was signed by both the parties on 31-3-1995 and the same was submitted in the office of the appropriate authorities for issuing certificate on 31-3-1995 itself. On the other hand, the learned Departmental Representative firstly placed strong reliance on the order of the authorities below. It was further submitted that the assessee was doing trading of share. Therefore, the Explanation to Section 73 is squarely applicable on the facts of the present case. Regarding the decision in the case of Aman Portfolio, (P.) Ltd. v. Dy. CIT (2005) 92 ITD 324 (Delhi), it was submitted that this decision was rendered by the SMC Bench of Delhi ITAT, however, in the case of Dy. CIT v. Frontline Capital Services Ltd. (2005) 96 TTJ (Delhi) 201, the Division Bench of Delhi Tribunal has overruled this decision in the case of Aman Portfolio (P.) Ltd. (supra), by which the issue has been decided against the assessee. Copy of the order in the case of Frontline Capital Services (P.) Ltd. (supra) was also filed by the learned Departmental Representative Regarding the other issues, the Id. DR strongly placed reliance on the order of the assessing officer as well as the order of the Commissioner (Appeals). The attention of the Bench was drawn on the relevant paragraphs of the order of the assessing officer

as well as the Commissioner (Appeals).

9. We have considered the rival submissions carefully. We will take up the first issue in regard to the claim of loss of Rs. 10,61,038 on sale of shares denied by the assessing officer and Commissioner (Appeals) by treating the same as speculation loss in view of the Explanation to Section 73. The assessee-company is inter alia carrying on the business of Investment Company. The main objects of the company as per the Memorandum of Association are as under: "(i) To carry on the business of buying, selling, leasing, or otherwise dealing in land whether leasehold or freehold agricultural or nonagricultural and any other immovable properties and developing such lands and constructing or reconstructing the building flats thereon acquiring bungalows, buildings, residential or otherwise factories, sheds on such lands, tenements in such bungalows, buildings, residential or otherwise factories, sheds, offices, schools, colleges, hotels, shops, cinema studios, cinema houses, cinema laboratories and to carry on the business of buying, selling, leasing or otherwise dealing in industrial estates, residential buildings anywhere in India and abroad.

(ii) To carry on business as an investment company and to invest money of the Company on the security of or in the purchase and acquisition of any stock, shares, units, bonds, debentures, debenture-stock, obligation, mortgages or securities of any Government State or Municipality or of any Company or Corporation and generally to subsidize for secure and hold, sell, exchange and deal in stock, obligations, mortgages or securities of any Government or Public Authority or company." 10. As per the above clauses of Memorandum of Association, it is clear that the company is doing the business of investment in shares. The investment in shares is one of the main businesses being carried out by the assessee-company is further corroborated by the Balance Sheet of the company which are placed on record. On perusal of the balance sheet for the year under consideration, it is seen that out of the total aggregated funds are of Rs. 8,35,31,395 which includes share capital reserves and surplus and loan funds. The assessee-company has made investment of Rs. 6,32,92,940 in the shares alone. The gross income of the assessee-company is at Rs. 1,44,00,584 which comprises of dividend income of Rs. 30,33,302 which accounts for more than 21

per cent of the total gross income. As such, the assessee's contention that investment in shares is one of the main business activities is proved beyond doubt. In case of Mafatlal Holdings Ltd. (supra), it has been ruled that investment in shares constitute business activity of the company and the assessee having carried on business in finance and investment during the relevant previous year, interest on borrowed capital was allowable under Section 36(1)(iii); no disallowance could be made on the ground that dividend income was exempt in the hands of the assessee. In the present case, as stated above, the main objects of the assessee-company are of making investment in shares. This fact is even proved as we have seen the Balance Sheet and Profit & Loss Account for assessment years 1994-95 and 1995-96, copies of which are placed on record. The computations of income for both of these years are enclosed. In the P&L Account the assessee has shown short-term capital gain on account of sale of investments. In the balance sheet, purchase of shares has been shown under the head 'investment'. In the P&L Account, the assessee has shown profit on sale of investment. The assessment for these two years i.e., 1994-95 and 1995-96 has been completed under section 143(3)/147 and the capital gain shown by the assessee on account of sale of investments has been accepted as it is.

We further noted that in the balance sheet for the subsequent two years i.e., 1997-98 and 1998-99 which are also placed on record and the same treatment has been given by the assessee for these two years also. In these two years, there was a loss on account of sale of investment and the department has accepted the loss on account of investment shown in P&L Account. The assessment orders are also placed on record.

Therefore, in our considered view, the Explanation to Section 73 which reads as under has no application on the facts of the present case: "Whereas any part of the business of a company other than a company whose gross total income consist mainly of income which is chargeable under the heads 'Interest on securities', 'Income from house property', 'Capital gains' and 'Income from other sources' or a company the principal business of which is the business of banking or granting of loans and advances consists in the purchase and sale of shares of other companies, such companies shall, for the purpose of this section, be

deemed to be carrying on a speculation business to the extent to which the business consist of the purchase and sale of such shares." 11. On careful perusal of the Explanation, it is clear that the said Explanation is only applicable to a company which is inter alia engaged in the business of purchase or sale of shares ie., trading in shares.

In the instant case, the company is not engaged in the business of the share trading as all the purchases of shares have been shown under the head 'investment'. Investment has been made by the assessee to earn income in the form of dividends and not to earn profit by trading in them. Therefore, in our considered view, the Explanation to Section 73 is not applicable on the facts of the present case. Regarding the decision in the case of Aman Portfolio (P.) Ltd. (supra), this decision was rendered in the case of trading in shares. Therefore, ratio of this decision, in our considered view, is not applicable on the facts of the present case, as in the instant case, the assessee is investing in the shares and has shown as investment and not stock-in-trade. This decision of the Tribunal in the case of Aman Portfolio (P.) Ltd. (supra), was considered while disposing the appeal in the case of Frontline Capital Services Ltd. (supra) by the ITAT Delhi 'B' Bench and has held that the decision is not applicable because the assessee was deals in trading in shares. Therefore, the Explanation to Section 73 was held to be applicable. Therefore, we are of the view that the decision in the case of Aman Portfolio (P.) Ltd. (supra), as well as the decision in the case of Frontline Capital Services Ltd. (supra), on which reliance was placed by the assessee and department respectively are not applicable on the facts of the present case for the reasons recorded above by us. Since the Explanation to Section 73 is not applicable on the facts of the present case, as the assessee's business is of business of investment in share. As discussed above, the assessing officer has accepted the claim of the assessee in the earlier years as well as in the subsequent years, therefore, in view of these facts and circumstances of the case, we direct the assessing officer to accept the claim of the assessee as Explanation to section 73 is not applicable on the facts of the present case. Since we have allowed the claim of the assessee in holding that the Explanation to Section 73 is not applicable, therefore, we are not inclined to consider the other contentions of the assessee raised during the course of hearing of the appeal through its written

submissions.

12. Now, we will take up the other issues i.e., regarding disallowance of compensation payment of Rs. 1, 10,87,000. After considering the relevant submissions and on perusal of other materials on record, we find that the assessee deserve to succeed in this ground also. The assessee entered in to MOU on 4-5-1994 with Sh. T.K. Lalwani and others for sale of its office premises situated at A.N. House, First Floor, 3 1 st Road, Bandra, Mumbai. The MOU stipulated the sale price at Rs. 2 crores. It provided that the assessee- company would vacate the office premises by first week of April, 1995 after which Sh. Lalwani could operate from the said premises. Copy of the MOU is placed on record at pages 16 to 18 of the paper book. The assessee received the entire sum of Rs. 2 crores in two instalments from Sh. Lalwani by cheque dated 4-5-1994 of Rs. 1,30,00,000 and cheque of dated 10-4-1995 of Rs. 70,00,000. For various reasons the assessee was unable to honour the MOU. In such a situation, Sh. Lalwani could have enforced a specific performance of the contract. As such with a view to protect and preserve its business assets i.e., office premises and prevent Sh.

Lalwani from enforcing a specific performance of the impugned contract, the assessee-company agreed to pay compensation of Rs. 1,10,00,000 in lieu of MOU as per mutual agreement between the parties. Copy of the letter dated 30-3-1995 for cancellation of MOU and agreed upon the compensation of Rs. 1,10,00,000 is placed on record at pages 19 to 21 of the paper book. The assessee- company did not have ready availability of funds for payment of the compensation of Rs. 1,10,00,000 and the repayment of Rs. 2 crores received on account of the impugned sale of office premises. Therefore, the assessee-company agreed to transfer all its rights, title and interests in the two flats at A I on the 6th floor and B2 on the 8th floor of the building at Great Eastern Royale Building being constructed by Great Eastern Developers at Bellasis Road, Tardeo, Bombay, in which the assessee-company had ownership. Accordingly, two agreements were entered on the same day i.e., 30-3-1995 for sale of Flat Nos. A I and B2 for a consideration of Rs. 1.43 crores each. Copies of the agreements are placed on record at pages 22 to 35 and 38 to 51 of the paper book. The whole arrangement was an integrated

one ie. the said two flats were sold with the sole objective of settling the claim of the Lalwani arising on account of cancellation of the MOU for sale of office premises in the absence of ready availability of funds. Firstly, the assessee-company has paid a sum of Rs. 68,00,000 in full and final settlement of the claim of the Lalwani by three cheques dated 15-5-1995. Although the compensation was originally agreed upon at Rs. 1, 10,00,000 as per letter dated 30-3-1995. However, the company actually ended up in paying of Rs. 1, 10,87,000. After considering all these aspects, we find that agreement in relation to cancellation of MOU and in regard to sale of 2 flats which was in lieu of reimbursement on account of MOU for office premises are inextricably linked and cannot be separated to each other. The assessee-company had 60 per cent of the share in Flat No. A I and 80 per cent in Flat No. B2 and profits arising out of these two flats worked to the tune of Rs. 1,13,06,285 which was offered for taxation as business income for assessment year 1996-97 and has accepted as such by the department. However, the department is not accepting the compensation paid to Sh. Lalwani on the reason that the compensation relates to assessment year 1995-96. In fact the taxability of profits on the sale of the 2 flats under the head 'Profit and Gain from Business', which has not been disputed by the department and it is an admitted fact that the 2 flats were held as stock-in-trade by the assessee-company and they were not capital assets within the meaning of Section 2(14) of the Act. Consequently section 2(47) defining 'transfer' in relation to capital asset is not applicable to assessee's case. The transfer of rights, title and interest in the 2 flats to the Lalwani were purely in the nature of business and resultant income was business income. The contention of the learned assessing officer that the assessee has paid compensation on account of capital assets and, therefore, the same is not allowable and has to be set off against business income, in our considered view, are not correct. The office premises of the assessee was shown as business assets and the assessee has claimed depreciation on the same.

Therefore, any profit earned out of business assets has to be given the same treatment as given on the other business assets. The flats earned by the assessee were shown stock-in-trade and whatever the profits earned by the assessee out of the sale of the two flats were offered for taxation. Therefore, any compensation paid in lieu of cancellation of sale of office premises has to be allowed as

deduction. Therefore, this contention of the assessing officer is not tenable and hence, rejected.

13. Regarding the contention that the compensation relates to assessment year 1995-96, we find that the assessing officer and the Commissioner (Appeals) were not correct in holding so. As we have already discussed above, that agreement to sale of transfer of the 2 flats and cancellation of sale of office premises are inextricably linked to each other. Therefore, they cannot be separated from each other. If the department wants to hold that compensation relates to assessment year 1995-96 then the sale consideration on account of the 2 flats has to be accepted for assessment year 1995-96. The cancellation of MOU in regard to office premises and sale of the 2 flats were made on the same day i.e., on 30-3-1995 which falls during the assessment year 1995-96. However, the assessee has shown profits on the sale of the 2 flats in assessment year 1996-97, as appropriate authorities issued certificate under Section 37-1 during the assessment year 1996-97 and as per agreed terms between the assessee and Sh. Lalwani, the sale in regard to the 2 flats was shown completed in assessment year 1996-97. Therefore, the compensation paid by the assessee was also taken into consideration for assessment year 1996-97. Therefore, in view of these facts and circumstances of case, we hold that the compensation has to be treated in the year in which the sale consideration of the 2 flats is taken into consideration. There will be no effect to the revenue whether the transaction are taken into consideration for assessment year 1995-96 or assessment year 1996-97 and, therefore, we are of the view that just to avoid multiplicity of the proceedings, claim on the sale of profits of the 2 flats and compensation paid to Sh. Lalwani should be treated in the year under consideration. We direct the assessing officer accordingly.

14. Regarding the contention that the assessee claimed Rs. 87,000 more, we find that the assessee had paid Rs. 1, 10,87,000. The details of payment made and received are given at pages 11 to 12 of the paper book. After going through these details, we find that the assessee had paid actual amount of Rs. 1, 10,87,000. Therefore, the entire amount paid as compensation is allowable. Regarding the contention that Sh.

Lalwani has denied the transaction, after considering all the facts and circumstances, we find that this contention or objection of the assessing officer is not correct. There is no dispute that the ownership and the title of the 2 flats had been transferred to Sh.

Lalwani and the same was transferred on account of cancellation of MOU in regard to sale of office premises. There is also no dispute that the assessee had made payment of Rs. 68 lakhs over and above the amount of consideration agreed upon on account of sale of the 2 flats which were at Rs. 1.43 lakhs each. In this way the assessee has made payment of Rs. 2.86 lakhs and Rs. 68 lakhs to Sh. Lalwani. The payment of Rs. 43,13,000 was due to be paid to M/s. Great Eastern Shipping Co. Ltd. which was paid by Sh. Lalwani as per agreement between the assessee and Sh. Lalwani. This amount of Rs. 43,13,000 was adjusted against the payment of Rs. 68 lakhs made by the assessee through cheque. Therefore, it cannot be said or held that there was no agreement between the assessee and Sh. Lalwani. It is also a fact that the denial letter received from Sh. Lalwani was riot provided to the assessee and, therefore, no proper opportunity was allowed to the assessee for cross-examination. The ratio of the decision of the Hon'ble Apex Court in the case of Kishinchand.

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