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Direct Tax Alert

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Tribunal holds that in case of amalgamation, the unabsorbed deprecation of Transferor companies forms part of WDV for Transferee Company

The Mumbai bench of the Income-tax Appellate Tribunal ('Tribunal'), in its recent decision[1] has laid down following important principles:

- The depreciation allowance in the hands of the Amalgamated Company (also referred as 'Transferee Company') is to be computed on the Written Down Value ('WDV') arrived at after adding the unabsorbed depreciation allowance of Amalgamating / Transferor Companies.
- The subsidy received for setting up industrial unit in backward area considered non-taxable under normal provisions of the Income-tax Act, 1961 ('the Act') is also immune from minimum alternate tax ('MAT') liability.

Issue 1 – Depreciation allowance in the hands of the Transferee Company to be computed on the WDV arrived at after adding the unabsorbed depreciation allowance of Transferor Companies

Background

- The Transferor Companies amalgamated with the Transferee Company with effect from appointed date of April 1, 2005 (FY 2005-06).
- For FY 2004-05 the transferor companies filed their return of income declaring business loss and unabsorbed depreciation.

[1] ITA No.156/Bang/2011 (Mumbai bench of Tribunal, November 29, 2019)

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- For FY 2005-06, the Assessee, i.e., the Transferee Company, claimed depreciation on the WDV of the assets received from Transferor Companies. The WDV of assets received from Transferor Companies was computed by the Transferee Company after adding the depreciation allowance remaining unabsorbed in the hands of the Transferor Companies.
- However, the Tax Officer recalculated the WDV in the hands of the Transferee Company by reducing therefrom the amount of unabsorbed depreciation allowance of the Transferor Companies. Accordingly, the depreciation was allowed on such reduced WDV by the Tax Officer.

Issue before the Tribunal

Whether the amount of unabsorbed depreciation allowance in the hands of the Transferor Companies (not allowed to the Transferee Company under section 72A) is to be added while computing WDV in the hands of the Transferee Company?

Tribunal's ruling

- The Tribunal observed that the WDV of the assets received pursuant to amalgamation was to be computed by reducing from the WDV for the immediately preceding previous year, only the depreciation as was 'actually allowed' to the Transferor Companies.
- In this regard, the Tribunal placing reliance on the Supreme Court ruling in the case of CIT vs. Doom Dooma India Ltd.[2] held that the term 'depreciation actually allowed' means depreciation for which the assessee has received an effective advantage / benefit, and not merely which is notionally allowed or allowable.
- The Tribunal thus concluded that the WDV in the hands of the Transferee Company is to be calculated after including the unabsorbed depreciation allowance of the Transferor Companies, for which set off was not allowed.

Dhruva comments

This is an important ruling rendered by the Mumbai Bench of the Tribunal. It reinforces the decision of the High Court of Madras in the case of EID Parry (India) Ltd. v. DCIT[3] and CIT v. Silical Metallurgic Ltd[4] as also the decision of High Court of Bombay in the case of ITO v. Hindustan Petroleum Corporation Limited[5].

This is a favorable ruling, which will have a far-reaching impact on amalgamation of companies not owning an industrial undertaking. By placing reliance on this ruling, the transferee

[2] [2009] 310 ITR 392 (Supreme Court)
[3] [2013] 256 CTR 104 (Madras)
[4] [2010] 324 ITR 29 (Madras)
[5] [1991] 187 ITR 1 (Bombay)

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company could adopt the WDV of assets transferred on amalgamation, without reducing therefrom the depreciation allowance not actually allowed to the transferor company.

Issue 2 – Where sales tax subsidy received from the government is not taxable under normal provisions of the Act, then the same is not to be considered while computing book-profits for MAT purpose

Background

- The Assessee had received certain sales tax subsidy from the Government of Karnataka for setting up a new industrial unit in the backward area.
- The subsidy was credited to the Profit and Loss Account and was considered as part of book profit in its return of income. The Assessee was assessed to tax under MAT provisions of the Act and accordingly the subsidy so received was subject to tax.
- The subsidy was held to be a capital receipt under the normal provisions of the Act and held not taxable by the First Appellate Authority.
- Subsequently, the Assessee realised that said subsidy being a capital receipt should also be excluded from book-profits while computing MAT. Accordingly, the Assessee prayed before the Tribunal that said subsidy should not be subject to MAT.

Issue before the Tribunal

Whether the subsidy granted to the Assessee being a capital receipt and not in the nature of income under normal provisions of the Act, should be excluded while computing book-profit under section 115JB?

Tribunal's ruling

- The Tribunal held that subsidy being a capital receipt not chargeable to tax under the normal provisions of the Act, was not liable to tax even under the provisions of section 115JB dealing with MAT.
- In this regard, the Tribunal relied on a plethora of rulings including the decision of High Court of Kolkata in the case of Ankit Metal & Power Ltd[6] and ruling of the Mumbai bench of Tribunal in Assessee's own case.

Dhruva comments

The is a favorable ruling by the Mumbai Bench of the Tribunal, affirming that a capital receipt not in the nature of income under normal provisions of the Act, even though credited to Profit

[6] ITA No. 155 of 2018 (Kolkata High Court, July 9, 2019)

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and Loss Account, should not be considered while computing MAT liability. This ruling by the Mumbai bench of the Tribunal is in line with various other judicial decisions[7] which have upheld the same. A similar proposition could also be explored for other capital receipts which are not chargeable to tax under normal provisions of the Act.

[7] Shivalik Venture (P.) Ltd. v. DCIT [2015] 173 TTJ 238 (Mumbai - Trib.); Sicpa India (P.) Ltd. v. DCIT [2017] 186 TTJ 289 (Kolkata - Trib.)

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www.dhruvaadvisors.com

Follow us on:

ADDRESSES

Mumbai
1101, One IndiaBulls Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel:+91 22 6108 1000 / 1900

Ahmedabad
B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahladnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru
Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR
101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune
305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata
4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore
Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore-049319
Tel: +65 9105 3645

Dubai
WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Bahrain
WTS Dhruva Consultants
2301, Level 23, P.O. Box No. 60570,
Harbour Tower (East), Bahrain Financial Harbour,
Kingdom of Bahrain
Tel: +973 1663 1921

New York
Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA
Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1-212-220-9494

KEY CONTACTS

Dinesh Kanabar (Mumbai)
Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Vishal Gada (Ahmedabad)
vishal.gada@dhruvaadvisors.com

Ajay Rotti (Bengaluru)
ajay.rotti@dhruvaadvisors.com

Rahul Mitra (Delhi / NCR)
rahul.mitra@dhruvaadvisors.com

K. Venkatachalam (Pune)
k.venkatachalam@dhruvaadvisors.com

Aditya Hans (Kolkata)
aditya.hans@dhruvaadvisors.com

Mahip Gupta (Singapore)
mahip.gupta@dhruvaadvisors.com

Nilesh Ashar (Dubai)
nilesh.ashar@dhruvaadvisors.com

Jilesh Shah (USA)
jilesh.shah@dhruvaadvisors.com

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