

## **Loss from sale of depreciable asset would always be short-term capital gain or loss if block ceases to exist**

**Summary – The Cochin ITAT in a recent case of Santhosh Hospital, (the Assessee) held that where assessee incurred loss on sale of car and claimed same as business loss, since assessee had claimed depreciation on its block of assets under section 32(1)(ii) and said car formed part of block of assets and said block had ceased to exist on sale of car, loss was short-term capital loss u/s 50.**

### **Facts**

- The assessee incurred loss on sale of car and claimed the same as business loss.
- The Assessing Officer having noticed that the assessee had claimed depreciation on its block of assets under section 32(1)(ii) and the said car formed part of block of assets and the said block had ceased to exist on sale of car held that the provisions of section 50 became applicable in the instant case. Therefore, the loss incurred by the assessee was short-term capital loss in terms of section 50. Accordingly, he disallowed the claim of loss on sale of car.
- On appeal, the assessee contended that the loss on sale of car was allowable under section 32(1)(iii). The Commissioner (Appeals) accepted the contention of the assessee and directed the Assessing Officer to delete the impugned disallowance.
- On second appeal :

### **Held**

- A perusal of the provisions of section 32(1) show that it is divided into two parts. Clauses (i) and (ii) of the first part describes the class of assets eligible for depreciation. As per this first part, the class of assets eligible for depreciation has been classified into two categories, viz., building, machinery, plant or furniture, being tangible assets, and know-how, patents, copyrights, etc., being intangible assets. The second part prescribes the manner of computation or allowing the depreciation. As per clause (i) of the second part, the depreciation is allowable on the assets of the undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee, as may be prescribed. As per clause (ii) of the second part, all other business undertakings are covered and the depreciation is allowed on the written down value of block of assets at such percentage as may be prescribed.
- A careful reading of clause (iii) of section 32(1) shows that the said clause is applicable only if the depreciation is claimed and allowed under clause (i) of the second part, being the computation portion of section 32(1). As already noted, clause (i) of second part is applicable to an undertaking engaged in generation or generation and distribution of power.

- Admittedly the assessee is not engaged in the business of generation or generation and distribution of power. Hence it has not claimed depreciation under section 32(1)(i). It has claimed depreciation on its block of assets only under section 32(1)(ii).
- The provisions of section 50 shall be applicable, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed. In the instance case, the car sold by the assessee was forming part of block of asset and depreciation was also allowed thereon. It is also an admitted fact that the concerned block has ceased to exist on sale of car. Hence, the Assessing Officer was right in invoking the provisions of section 50 in treating the loss as short term capital loss.
- In this regard, a gainful reference can be made to the return form ITR-5. Under Item 16 of Schedule DPM, an assessee is expected to declare the capital gains/loss under section 50 and the same is required to be carried forward to Schedule DCG and then to Schedule CG. The said return form supports the view taken by the Assessing Officer.
- Therefore, the decision rendered by the Commissioner (Appeals) was liable to be set aside.