ITAT exempts capital gain on sale of self-generated trademark as its cost of improvement isn't ascertainable

Summary – The Pune ITAT in a recent case of Institute for Micronutrient Technology., (the Assessee) held that where asset under transfer was self-generated trademark, its cost of acquisition being NIL and same is not capable of improvement at an ascertainable cost in terms of money, computation of capital gains is not possible and, thus, same is not taxable under section 45.

Facts

- The appellant was a partnership firm primarily engaged in Research and Development activities in the field of balanced plant nutrition. The assessee-firm had registered trademarks, logos, copyrights in its own name in respect of various products, charts evolved by it over a period of 40 years.
- During the year under consideration, assessee sold certain intangible assets, in the form of 'trademarks' for a consideration of Rs. 1.51 crores. The assessee computed long term capital gain (LTCG) of Rs. 72.81 lakhs after considering the cost of acquisition at Rs. 72.39 lakhs.
- The Assessing Officer while making the assessment under section 143(3) denied the claim for deduction of Rs. 72.39 lakhs on the ground that the 'cost of acquisition' as well as 'cost of improvement' is liable to be taken as 'Nil' in view of section 55(2)(a)(ii) and section 55(1)(b) respectively.
- On appeal, the Commissioner (Appeals) also disallowed the expenditure of Rs. 72.39 lakhs on LTCG.
- On further appeal to Tribunal:

Held

- The transfer of goodwill initially generated in a business does not give rise to a capital gain because the computation provisions cannot be applied in the absence of cost of acquisition and the date when it came to existence.
- For a transfer of capital asset to be liable for charge as 'capital gains' under section 45, it must fall under the governance of its computation provisions also, and a transaction to which the computation provisions cannot be applied, it must be regarded as never regarded by section 45 to be charged to tax under Chapter IV.
- Sub-section (2) of section 55 provides the meaning of expression 'cost of acquisition' for the purposes of sections 48 and 49. In relation to 'trademark', the cost of acquisition is meant to be (i) the amount of purchase price, in case it is acquired from a provisions owner; and, (ii) *Nil,* in all other cases. In the instant case, the 'trademark' under transfer has been developed by the assessee on its own and has not been acquired from any third party therefore by operation of section 55(2)(a)(ii) the 'cost of acquisition' for the purposes of section 48 is deemed to be taken as *'Nil'*. Since the statutory provisions provide for 'cost of acquisition' to be *'Nil'* in case of a 'trademark', the

computation provisions do not fail on the basis of the plea of the assessee that asset under consideration i.e. 'trademarks', which is self generated/developed, is not an asset which possesses the inherent quality of being available on the expenditure of money to a person seeking to acquire it, and thus it does not possess a 'cost of acquisition.'

- Further, according to the assessee, the asset under transfer i.e. trademark is not an asset which is capable of improvement on incurrence of cost in terms of money, it cannot be contemplated to be an asset intended to be covered in terms of section 48(ii) and therefore, the computation provisions fail and as a result of which, the transaction would not be chargeable to tax in terms of section 45(1).
- The aforesaid proposition is further supported by the assessee by referring to the provisions of section 55(1)(b).
- According to the assessee, the meaning of 'cost of any improvement' for the purposes of section 48 has been provided in section 55(1)(b) and the same does not include a capital asset in the shape of trademark. A conjoint reading of section 55(2)(a) and section 55(1)(b), ascribe the meaning of 'cost of acquisition' and 'cost of any improvement' respectively for the purposes of section 48. Clearly section 55(2)(a) prescribes cost of acquisition of a trademark for the purposes of section 48 at *Nil,* whereas no such prescription is contained in section 55(1)(b) defining the 'cost of any improvement' of a trademark for the purposes of section 48. Therefore, the plea of the assessee to the effect that a self-generated trademark is not capable of improvement at an ascertainable cost in terms of money and 'cost of any improvement' thereto has not been defined for purposes of section 48 in section 55(1)(b), is well founded.
- In the instant case, the asset under transfer is self-generated trademarks and the same is not capable of improvement at an ascertainable cost in terms of money and therefore in the absence of any possibility to determine the 'cost of any improvement' referred to in section 48(ii), the computation of capital gains fail and accordingly it is outside the scope and ambit of the charge envisaged under section 45(1).
- Thus, in view of the aforesaid discussion, there was no capital gain exigible to tax under section 45(1) on transfer of the impugned trademark by the assessee and that the lower authorities have erred in taxing the same while computing the total income of the assessee.
- Accordingly the order of the Commissioner (Appeals) is set aside and the Assessing Officer is directed to allow appropriate relief to the assessee, as above. Appeal of the assessee is allowed.