

In case of old windmill purchased at higher cost to claim excessive depreciation, actual cost was to be reduced

Summary – The Chennai ITAT in a recent case of Smt. V. Sabithamani., (the Assessee) held that if old windmill was purchased at enhanced price which resulted in aggregate of depreciation claimed by previous and present owner much higher than original cost, purpose of transfer was reduction of tax liability and, hence, cost in hands of assessee was to be reduced

Facts

- The assessee was engaged in the business of trading in steel goods. The assessee purchased a windmill at the price of Rs. 2.36 crores from one Saundarjan Mills Ltd. and claimed depreciation of Rs. 2.07 crores on it. The re-opening proceedings were initiated against assessee on grounds that the assessee had claimed excessive depreciation on a second hand windmill.
- The Assessing Officer held that the main idea behind the purchase of the second hand windmill at such a high price was to reduce tax liability by claiming depreciation on such enhanced cost. The seller had claimed depreciation of Rs. 3 crores on windmill for the period April 2003 to March 2009. The assessee had claimed the depreciation of Rs. 2.7 crores for the period March 2009 to March 2010, based on an enhanced value of windmill. Thus, depreciation came to Rs. 5.07 crores whereas the certified cost of windmill was Rs. 3 crores and if the aggregate of the depreciation claimed by seller and by the assessee, considered together, it would be much more than the cost of windmill. Thus, he worked out the actual cost of the windmill as Rs. 43.28 lakhs and allowed depreciation only on the said amount.
- On appeal, the Commissioner (Appeals) modified the order of the Assessing Officer and directed the Assessing Officer to consider the actual cost as Rs. 1.50 crores and recompute the disallowance.
- On cross appeal:

Held

- A reading of *Explanation 3* of section 43(1) brings out the circumstances in which it can be applied. The requirement is that the Assessing Officer should be satisfied that the purpose of transfer of assets was reduction of liability to tax. No doubt, such satisfaction should be an objective one and not a subjective one. The basis on which Assessing Officer, had in the instant case, reached this satisfaction is that the depreciation claimed by the earlier owner as well as the assessee on the windmill when aggregated, came to a sum in excess of Rs. 5 crores, and this was much higher than original cost of the windmill as such. When original cost of the windmill was itself much less than Rs. 5 crores, the main purpose of transfer of windmill by the seller, to the assessee could only be seen as motivated by an intent to reduce liability to income-tax. It is a well settled principle of law that what is permissible is tax planning and not evasion. When an attempt is made to evade tax, it is the bounden duty of the authorities to find the real intention. It is the duty of the judicial authorities, in

every case, when ingenuity is expended to avoid taxes and scuttle welfare legislations, to get behind the smoke screen and discover the true state of affairs. Form has to make-way for substance. That the parties were not related and transfer of windmill from the seller to the assessee was only a business transaction, were not relevant factors. Relevant factor was the main purpose which motivated the assessee to acquire the second hand windmill at an excessive cost. It is not disputed that depreciated value of the said windmill in the hands of the seller was negligible at the time of such sale. Enercon (India) Ltd. who manufactured the windmill had certified that the model sold by the seller to the assessee was no more in market. They also declined to assign a value which, in order words, mean that the windmill which was more than 5-1/2 years old was of obsolete technology. These factors clearly indicate that the transfer of windmill to the assessee from the seller, at a price of Rs. 2.36 crores itself was a questionable and doubtful one, with the only intention to reduce tax liability. It may be true that assessee had raised a loan of Rs. 144 lakhs from bank, based on a valuation report requisitioned by the said bank and in the said valuation report, the value of the windmill was fixed as Rs. 2.19 crores. It may also be true that Government approved valuer had fixed the value of windmill at Rs. 2.95 crores. However, for invoking *Explanation 3* to section 43(1) what is required is the objective satisfaction reached by the Assessing Officer that the main purpose of transfer is reduction of tax liability. The valuations may be relevant in ordinary circumstances but when the cumulated depreciation claimed was far in excess of the cost, relevance of such valuations is insignificant. Especially so since Commissioner (Appeals) had found glaring deficiencies in such valuation, where only depreciation for one year alone was considered. The Commissioner (Appeals), was not justified in substituting the value adopted by the Assessing Officer with one based on a method adopted by TIIC, a Government agency. Assessing Officer had adopted a fair method of multiplying the average generation per year with per unit cost of electricity generated. This was the method adopted by the assessee itself for valuing four numbers of windmill offered by it as collateral for raising loan from Canara Bank, except for the difference in unit rate. The conditions for invoking *Explanation 3* to section 43(1) were satisfied, therefore, the order of the Commissioner (Appeals) are to be set aside.