

HC denied claim of dep. on software as assessee failed to demonstrate genuineness of its purchase

Summary – The High Court of Delhi in a recent case of Chintels India Ltd., (the Assessee) held that where since assessee was not able to demonstrate genuineness of purchase of software and further story put forth by assessee that software had been handed over to collaborator for completing assessee's housing project was also not substantiated by any documentary evidence, said purchase was to be held to be a bogus transaction not entitled to depreciation

Where notice under section 143(3) was not issued within period of six month from filing of return, return filed would become final and no scrutiny proceedings could be started in respect of said return

Facts

- The assessee was engaged in the business of horticulture, agriculture and real estate. A search and seizure operation under section 132(1) was conducted at the business and residential premises of the assessee on 26th March, 2010. A notice was issued by the Assessing Officer to file return for earlier years.
- The Assessing Officer noted that the assessee had claimed depreciation on software but had not filed any document about the use of the software purchased from ('MIL') which concern was found bogus in enquiry. A detailed questionnaire had been issued to the assessee on 19th August, 2011 requiring the assessee to furnish the nature and description of the product/goods purchased from MIL.
- The assessee gave an explanation that all the payments for the purchase of software were made to MIL through payee's cheques; the software was installed in the assessee-company and that it was used as a marketing/sales tool in order to convince Sobha to participate in the development of the group housing project. Later, the software was handed over to Sobha for the project. Since the project stood cancelled by a subsequent agreement the assessee was informed that the software had been damaged/destroyed with Sobha and could not be returned. Accordingly the assessee had debited the purchases in the computer software account and claimed depreciation thereon.
- The Assessing Officer concluded that the assessee had not offered any satisfactory explanation and no documentary evidence had been produced to show that the software had been handed over to Sobha. Even in respect of software destroyed, no document had been produced and made addition in respect of bogus depreciation claimed .
- The Commissioner (Appeals) dismissed the appeal of the assessee.
- The Tribunal noted that there was no purchase of any hardware corresponding to the extent of purchase of the software and how the software was installed and how it was used was not demonstrated by the assessee. The Tribunal confirmed the disallowance of depreciation on software. In regard to assessment year 2008-09, a specific plea was raised by the assessee that the assessment for assessment year 2008-09 had abated as no notice had been issued to the assessee either under section 143(2) or under section 142(1) within the stipulated time. The Tribunal

concluded that the date of initiation of search was 25th March, 2010 and the date of intimation under section 143(1) was 27th March, 2010 and that as on the date of initiation of the search the assessment for assessment year 2008-09 was pending and had not abated.

Held

- As far as assessment year 2008-09 is concerned, the fact that there was no notice sent to the assessee under section 143(3) before the deadline, *i.e.*, 30th September, 2009, is not in dispute. The CBDT Circular No. 549 dated 31st October, 1989 deals with such a situation. In the present case, the facts speak for themselves. The assessee filed its return on 21st October, 2008. The return was processed under section 143(1) of the Act on 27th March, 2010. The inevitable conclusion, therefore, in the present case, is that the Tribunal was in error in holding that the assessment for assessment year 2008-09 should be treated as 'pending' whereas in terms of the above CBDT circular, it should be treated as final in respect of which no scrutiny are to be started.
- As regards appeal for 2009-10 and 2010-11, the Tribunal has re-examined every shred of evidence to come to clear conclusion that the assessee was not able to demonstrate the genuineness of the purchase of software and further the story put forth by the assessee that the software having been handed over to Sobha was also not substantiated by any documentary evidence or even otherwise. On facts, therefore, the concurrent opinions of the Assessing Officer, Commissioner (Appeals) and the Tribunal to the effect that the purchase of the software was, in fact, a bogus transaction not entitled to depreciation cannot be said to be suffering from any legal infirmity warranting interference.