Tangible and intangible assets having same rate of depreciation were to be included in same block of assets

Summary – The Delhi ITAT in a recent case of Panchshila Hospitality Ventures Ltd., (the Assessee) held that Two assets falling within two different classes being tangible and intangible can constitute a single 'block of assets' if they are eligible for depreciation at same rate

Disallowance under section 14A without recording a proper satisfaction with regard to books of account to be deleted

Facts

- The assessee-company had sold a running restaurant on 'as is where is' basis for a sale consideration with building and furniture and plant & machinery. In its return, the assessee had shown short-term capital gains which was enhanced by the Assessing Officer.
- The Commissioner (Appeal) opined that under section 50, it is mandatory that the assets should fall within same 'class of asset' and also in the same 'block of asset' and should also be eligible for the same rates of depreciation and thus, had worked out short-term capital gain at higher price by only considering 'building' as the capital asset sold, as the 'furniture' and 'plant & machinery' fell under different classes of assets.
- On appeal:

Held

- After perusing sections 50 and 2(11), more specifically section 2(11), one thing that evidently becomes clear is that in the Income-tax Act, there are only two categories of class of assets, *i.e.*, tangible and intangible and within the same class, various block of assets are covered. In the instant case, on going through the order of the Commissioner (Appeals), it is observed that he has failed to appreciate the fact that section 2(11) specifies only two class of assets, *i.e.*, tangible and intangible assets and within these two classes of assets, assets having same rate of depreciation are prescribed and they fall within the same block. Whereas, the concept of an asset falling within the same block is driven by the same rate of depreciation once it falls in the same class of assets.
- In view of the above, the Commissioner (Appeals) has completely misunderstood and misconceived the sections 50 and 2(11) and has wrongly interpreted that an asset can be in the same block only on the basis of class of assets, as well as rate of depreciation and not on rate of depreciation alone. It is the finding of the Commissioner (Appeals) that for an assessee to be in the same block of asset, it is mandatory that they should fall within same 'class of asset' should also be eligible in the same rate. The Commissioner (Appeals) in his order has held that, two assets falling within two different

© 2017, Tenet Tax & Legal Private Limited

classes can never constitute a single 'block of assets' even though they may be eligible for depreciation at the same rate.

- The finding recorded by the Commissioner (Appeals) is against the provisions as envisaged under the Income-tax Act, which has also been consistently being adopted and followed by the assessee-company, which view has also been accepted by the Income-tax department in the earlier and subsequent years and in light of the provisions of section 2(11), read with section 50 and order so passed by the Commissioner (Appeals) is dismissed and addition so sustained by Commissioner (Appeals) is therefore deleted and accordingly, it is held that the short-term capital gain of the assessee-company be assessed as declared in its return of income as the same has arisen on sale of assets falling in the same class of assets under section 2(11) as the rates of depreciation so prescribed for the said building and furniture and fixtures is also the same. Hence, the addition so sustained by the Commissioner (Appeals) is wholly unwarranted inasmuch as same was based on complete misreading of the provisions so envisaged in section 2(11) and as such, appeal of the assessee is allowed.

© 2017, Tenet Tax & Legal Private Limited