

Dep. not to be denied in hands of amalgated co. even if assets transferred in amalgamation were non-functional

Summary – The Kolkata ITAT in a recent case of Hindustan Engineering & Industries Ltd., (the Assessee) held that where a sick company amalgamated with assessee-company, by operation of law assets of sick company fell in 'Block of assets' of assessee-company and thus even through such assets were non-functional, yet they could not be segregated and depreciation had to be allowed in respect of same

Facts

- A sick company namely MSL was amalgamated by virtue of the order of BIFR with the assessee-company. BIFR ordered the amalgamation with retrospective date *i.e.* from 1-4-2009 *i.e.* from assessment year 2010-11 onwards. The assessee-company claimed depreciation of assets from assessment years 2010-11 to 2015-16.
- The Assessing Officer denied the assessee's claim citing the order in the case of MSL (pre-amalgamation) for assessment years 2004-05 and 2006-07. In the pre-amalgamation original assessment, as per appellate order of the Commissioner (Appeals) in the hands of pre-amalgamated company, the depreciation was denied, taking note of the fact that its plant and machinery was not used/non-user of it, when undisputedly, MSL declared lay-off on 20-10-1998 due to a major fire mishap.
- The Commissioner (Appeals) confirmed disallowance of depreciation in case of assessee-company.
- On second appeal:

Held

- From a perusal of the dates and events which took place, it reveals that the unit of MSL was non-functional from 15-10-1998 till the date of order of BIFR (*i.e.* 4-9-2012). So when the sick company MSL in their original assessments (pre-amalgamation) claimed depreciation, naturally it was denied to it by the Assessing Officer as well as Commissioner (Appeals) citing the reason that unit of MSL was non-functional, because there was no occasion when its plant and machinery was used during the lay-off/closed period.
- However, the factual matrix in assessment year 2010-11 onwards changed because of the order of BIFR dated 4-9-2012, wherein BIFR amalgamated MSL with the assessee retrospectively with effect from 1-4-2009 *i.e.* from assessment year 2010-11. It should be remembered that the true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one, the transferor company loses its entity (in the present case MSL) as it ceases to have its business, though their respective rights or liabilities are determined under the scheme of amalgamation.

- The assessee/appellant company had taken over the sick company MSL through the scheme of amalgamation sanctioned on 4-9-2012 with effect from 1-4-2009 (*i.e.* from assessment year 2010-11 onwards) and so in the eyes of law, MSL ceased to have any identity as it did not remain a '*person*' either in fact or in law after amalgamation. So, in the relevant assessment year, the assessee has claimed depreciation on its assets, because by amalgamation, the assets of amalgamated company (MSL) gets vested with assessee and have become part of '*Block of Assets*' of the assessee-company. After the amendment of section 32 by the Taxation Laws (Amendment) Act, 1986, major change happened in respect to the manner in which the depreciation is to be allowed after the concept of '*block of assets*' was introduced.
- Thus, in the present case for the assessment year *i.e.* 2012-13, the W.D.V. of any block of assets shall be the aggregate of the W.D.V of all the assets falling within that block of assets at the beginning of the previous year. From this, the adjustments have to be made for the increase or reduction in the block of assets during the year under consideration. The deduction from the block of assets has to be made in respect of any asset, sold, discarded or demolished or destroyed during the previous year. As per amended section 32, deduction is to be allowed - '*In the case of any block of assets, such percentage on the written down value thereof as may be prescribed.*'
- Thus, the depreciation is allowed on block of assets, and the revenue cannot segregate a particular asset therefrom on the ground that it was not put to use. With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the '*block of assets*' at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of '*block of assets*' has been introduced, which is relevant for calculating the depreciation. The Circular issued by the revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No. 469, dated 23-09-1986, wherein the rationale behind the aforesaid amendment is described.
- From a reading of the aforesaid Circular it is clear that the legislature felt that keeping the details with regards to each and every depreciable asset was time consuming for both the assessee and the Assessing Officer. Therefore, the Parliament in its wisdom amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of asset falling within the same class of assets.
- Along with the amendment as aforesaid, the Parliament in its wisdom has made another significant and contemporaneous amendment, which needs to be taken note. The Parliament has also deleted the provision for allowing terminal depreciation in respect of each assets, which was previously allowable under section 32(1)(iii) and also taxing of balancing charge under section 41(2) in the year of sale. In substitution of these two provisions, now whatever is the sale-proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assessee is not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1)(iii). This amendment

also strengthened the claim that now only details for '*block of assets*' has to be maintained and not separately for each asset.

- In view of aforesaid, since the assets of MSL after amalgamation had become assets of assessee-company by operation of law, it fell into 'Block of assets' of assessee-company and though such assets, non-functional, yet they could not be segregated and depreciation had to be allowed taking first year as assessment year 2010-11 onwards and WDV to be calculated for assessment year 2012-13.