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Sale of windmills qualifies as slump sale

The Vishakhapatnam bench of the Indian Income-tax Appellate Tribunal rendered its decision that windmills constituted a separate undertaking and the capital gains thereon were to be calculated as per the specific slump sale provisions under the Income-tax Act, 1961.

Facts:

- Devi Sea Foods Ltd. (taxpayer)¹ is engaged in the business of aqua culture, export of frozen shrimp, sale of hatchery seed and wind power generation.
- During the Financial Year (FY) 2012-13, corresponding to Assessment Year (AY) 2013-14, the taxpayer sold three windmills at different locations and offered the gains thereof to tax as long term capital gains (LTCG) on slump sale [as per the provisions of section 50B of the Income-tax Act, 1961 (ITA)].
 - From AY 2009-10 onwards, the taxpayer had claimed deduction under section 80IA of the ITA (being a profit-linked deduction) on the income of the windmill as a separate business.
- The Assessing Officer (AO) during the course of audit, denied the LTCG claim on slump sale, treated the windmill as depreciable asset and subjected the same to short term capital gains (STCG), on the following basis:
 - The taxpayer could not explain why the windmills should not be treated as asset instead of separate undertaking (as required for applicability of slump sale);
 - The taxpayer had not furnished balance sheet, profit and loss account for the windmill business activity.
- On appeal, the Commissioner of Income tax-Appeals [CIT(A)] held that each windmill was a unit of an undertaking covered under the definition of slump sale and directed the AO to treat the sale of windmill as slump sale.
- Aggrieved by the CIT(A)'s order, the AO filed an appeal before the Vishakhapatnam Bench of the Income-tax Appellate Tribunal (ITAT).

Relevant provisions in brief:

- As per section 2(42C) of the ITA, slump sale means the transfer of one or more undertakings for lump sum consideration without values being assigned to individual assets and liabilities.

¹ ACIT v. Devi Sea Foods Ltd. [2020] 117 taxmann.com 440 (Vishakhapatnam Tribunal)

Undertaking has been defined under Explanation 1 to section 2(19AA) of the ITA to include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

- As per section 50 of the ITA, gain on sale of depreciable assets is treated as STCG.
- STCG are taxed at a rate higher than LTCG and the calculation of capital gain on slump sale is different from calculation of capital gain on sale of depreciable assets.

Decision of the ITAT:

- The ITAT noted that the issue under consideration was whether the windmill was a separate undertaking or not; if yes, then the taxpayer was entitled to calculate the capital gains as per the specific slump sale provisions provided under the ITA.
- The ITAT noted that:
 - Undertaking under the ITA was defined as any part of an undertaking or unit or division of an undertaking or a business activity taken as a whole, but it did not include individual assets or liabilities or any combination thereof not constituting the business activity.
 - Though the taxpayer did not maintain separate books of accounts, the taxpayer maintained separate ledger accounts and claimed deduction under section 80IA of the ITA (being a profit linked deduction) separately, for the income generated from individual windmill units each year.
 - As per the profit and loss account, the taxpayer had computed profits from windmills separately and ascertained the income and expenditure separately for windmills as well as for the taxpayer's business.
 - The Andhra Pradesh High Court² had held that non-maintenance of separate books of accounts did not disentitle the taxpayer for deduction under section 80J of the ITA. Similarly, the Gujarat High Court³ had held that deduction under section 80IA of the ITA could not be denied solely on the grounds that separate profit and loss account and balance sheet were not produced.
 - The Pune Bench of the ITAT⁴ had held that each windmill was a separate undertaking.
- In view of the above and on the following basis, the ITAT held that each windmill constituted a separate undertaking and the capital gains were to be calculated as per the provisions relating to slump sale under the ITA:
 - The windmills satisfied all the conditions of separate undertaking.
 - Since the taxpayer had transferred the windmill along with all its assets and liabilities, it qualified as slump sale.

² CIT v. Abhirami Cotton Mills (P) Ltd. [1996] 87 Taxman 152 (Andhra Pradesh HC)

³ Ajanta (P) Ltd. v. DCIT [2017] 77 taxmann.com 227 (Gujarat HC)

⁴ Sargam Retails (P.) Ltd. ITA No. 1479/Pun/2015 dated 20-12-2017

Comments:

- This ruling affirms the principle that windmills constitute a separate undertaking if the income, expenditure and profits therefrom are ascertained separately. The same holds true even if separate books of accounts are not maintained.



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