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Stamp duty value cannot be substituted for actual consideration in computation of block of assets

The Delhi Bench of the Income-tax Appellate Tribunal has held that the provisions relating to substitution of higher stamp duty value (in place of actual consideration) cannot be incorporated in the computation of block of assets

Facts of the case:

- Furturz Next Services Private Limited (the taxpayer)¹ is an Indian company, engaged in the business of online trading in various commodities, shares and securities and trading in physical commodities such as silver and gold.
- During the Financial Year (FY) 2012-13, corresponding to Assessment Year (AY) 2013-14, the taxpayer had sold a property, i.e. premises for a consideration of INR 20 million. The said property formed part of the depreciable block of building for income-tax purposes.

However, considering that the property was mortgaged, the taxpayer did not give physical possession of the property to the buyer and did not record the sale in its books of accounts for FY 2012-13. Consequently, the taxpayer claimed depreciation on the entire block of building during FY 2012-13, including with respect to the property sold of INR 20 million.

- The Assessing officer (AO) did not agree with the taxpayer's contention and held that the property should be considered to be sold during the FY 2012-13. Further, the AO noted that the stamp duty value of the property was ~INR 28.71 million (i.e. significantly higher than the agreed sale consideration of INR 20 million).

Accordingly, based on the provisions of section 50C of the Income-tax Act, 1961 (ITA), the AO substituted the stamp duty value of ~INR 28.71 million for the actual sale consideration of INR 20 million. Consequently, the AO reduced ~INR 28.71 million from the block of building and disallowed the taxpayer's claim of depreciation on ~INR 28.71 million.

- On appeal, the Commissioner of Income-tax Appeals [CIT (A)] upheld the AO's order.
- Aggrieved by the CIT (A)'s order, the taxpayer filed an appeal before the Delhi Bench of the Income-tax Appellate Tribunal (ITAT).

Provisions, which are relevant in brief:

¹ DCIT v. Furturz Next Services (Private) Limited ITA No 1383/Del/2017 & ITA no 2396/Del/2017

- As per section 43(6)(c)(i)(B) of the ITA, a block of asset needs to be reduced by the sale consideration in respect of an asset sold from that block.
- As per section 50C of the ITA, where the stamp duty value of a land or building or both exceeds the actual sale consideration by the specified threshold, then the stamp duty value needs to be substituted for the actual sales consideration for the purposes of computing capital gains.

Decision of the ITAT:

- The ITAT noted that the following two issues had emerged in the case under consideration:
 - Whether the property could be considered to be transferred / sold during the FY 2012-13?
 - Quantum of depreciation allowable on the block of building.

Issue 1: Whether the property could be considered to be transferred / sold during the FY 2012-13?

- The ITAT noted the following facts:
 - The taxpayer had entered into a sale deed (for sale of the property under consideration) on 12 July 2012;
 - The entire sale consideration of INR 20 million was received by the taxpayer on 11 July 2012 i.e. prior to the execution of the sale deed;
 - The shares of the society (relating to the property sold) were transferred prior to the execution of sale deed.
- In view of the above facts the ITAT held that, just because the taxpayer had agreed to pay and discharge the outstanding dues and liabilities in respect of the share in the premises, it could not be said that the property was not transferred. Accordingly, the ITAT held that the property should be considered to be transferred / sold by the taxpayer during the FY 2012-13.

Issue 2: Quantum of depreciation allowable on the block of building

The ITAT held the following:

- As per the provisions of the ITA, depreciation is allowable to the taxpayer on the written down value (WDV) of the block of asset. Further, the block of asset is required to be reduced by the monies payable (i.e. sales consideration) in respect of any asset of the block which is, inter alia, sold during the year.
- The taxpayer had sold property (forming part of the block of building) during the FY 2012-13 and hence, the sales consideration thereof was required to be reduced from the block of building.
- The provisions of section 50C of the ITA, were applicable for the purposes of computation of capital gains only and hence, could not be incorporated in the computation of block of assets under section 43(6) of the ITA.

In view of the above, the ITAT directed the AO to reduce the actual sale consideration of INR 20 million and not the stamp duty value of ~INR 28.71 million, from the WDV of the block of building and calculate the depreciation allowable to the taxpayer.

Comments:

- This ruling lays down the principle that the provisions relating to substitution of stamp duty value for actual consideration cannot be incorporated in computation of block of assets.



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