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Sharp Insights

The Bangalore Tribunal, in the case of Karnataka State Industrial Infrastructure Development Corporation Ltd. ('the assessee company') v. DCIT reported in [2016] (76 taxmann.com 360) has held that the assessee is entitled to the benefit of indexation while computing long term capital gains exempt under section 10(38) of the Income-tax Act, 1961 ('ITA') for the purposes of computing book profits under section 115JB of the ITA.

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Background

- The taxpayer had filed its return of income for the assessment year 2008-09 declaring its total income as 'nil' under the normal provisions of the ITA. However, the assessee company returned income of Rs.34,49,26,560 under the provisions of section 115JB of the ITA.
- While computing the book profits under section 115JB, the assessee company claimed deduction of indexed cost of acquisition for the purposes of computing capital gains exempt under section 10(38) of the Act.
- The Assessing Officer ('AO') denied the above benefit claimed by the assessee company and held that the amount of capital gains exempt under section 10(38) for the purpose of computing income-tax liability under section 115JB is to be computed without indexing the cost of acquisition.
- The first appellate authority concurred with the view taken by the AO and denied the benefit taken by the taxpayer.

Ruling of the Bangalore Tribunal

- The Tribunal observed that the issue revolves around interpretation of the term 'any income' as used in section 10(38) of the ITA from the transfer of long term capital asset.
- The Tribunal held that the term 'any income' used in section 10(38) of the ITA refers to only the amount of long term capital gains computed under the provisions of section 48. This would mean that the benefit of indexation of cost of acquisition should be given to the assessee while computing long term capital gain for the purpose of section 115JB of the Act.
- The Tribunal relied on the decision of the jurisdictional Karnataka High Court in the case of M.S.R & Sons Investments Ltd. (ITA No.3189 of 2005) wherein the High Court dismissed the appeal of the revenue authorities against the Tribunal Order holding that while computing capital gains, benefit of indexed cost of acquisition is to be considered for the purpose of computing income-tax liability under section 115JB of the ITA.
- Following the above decision of jurisdictional High Court, the Tribunal has held that the assessee company is entitled to the benefit of indexation while computing long-term capital gains which are to be considered for computing income-tax liability under section 115JB of the ITA.

Conclusion

The Supreme Court in the case of Apollo Tyres Ltd. v. CIT (255 ITR 273) has held that only the adjustments as specified in Explanation 1 to section 115JB of the ITA are allowed to be made for computing income-tax liability under section 115JB.

The Bangalore Tribunal upholds the availability of indexation benefit on cost of acquisition while computing capital gains exempt under section 10(38) for the purposes of computing book profits as specified in Explanation 1 to section 115JB of the ITA.

The Bangalore Tribunal upholds an interesting proposition.

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