

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Claim of depreciation on goodwill arising on amalgamation not allowable¹

The Bangalore Tribunal recently held that claim of depreciation on goodwill arising on amalgamation cannot be allowed. The Tribunal relied on fifth proviso to section 32(1) of the Income-tax Act, 1961 (Act) which provides that depreciation on the assets acquired on amalgamation cannot be more than the depreciation as was allowable to the amalgamating company had the amalgamation not taken place.

The Tribunal held that since no depreciation was being claimed on goodwill by the amalgamating company prior to amalgamation, taxpayer's claim of depreciation on goodwill was required to be restricted to nil.

The Supreme Court of India had earlier held² that goodwill is a depreciable asset. In the facts of the case before the Supreme Court also the tax payer had undergone an amalgamation. As regards the Supreme Court case, the Bangalore Tribunal was of the view that the Supreme Court ruling was only on the point whether 'goodwill' falls in the category of intangible assets or any other business or commercial rights of similar nature and is eligible for depreciation. The Tribunal ruled that no claim of depreciation on goodwill arising on amalgamation can be allowed in the hands of the amalgamated company since no depreciation was being claimed by the amalgamating company.

2. Mere fact that tax has been withheld does not mean that income is taxable³

The Mumbai Tribunal held that mere fact that tax has been withheld on amount received by the taxpayer

does not lead to any inference that offshore supply is taxable in India. The case involved offshore supply of goods and in the facts it was held that income from offshore supply is not taxable especially when sale had been concluded outside India on principal to principal basis. The fact that taxes have been withheld on the payment is not conclusive that the payment is taxable in India.

1 Bangalore Income tax Appellate Tribunal - I.T. A. No.722, 801 & 1065/Bang/2014, in the case of United Breweries Limited

2 CIT Vs. Smifs Securities Limited [252 CTR 233(SC)]

3 The Mumbai Tribunal in the case of ABB Switzerland Ltd. Vs ADIT (IT) -1(1) [2016] 73 taxmann.com 166 (Mumbai - Trib.)

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