



REPORTABLE

* **THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 12.08.2008
% Judgment delivered on : 16.09.2008

+ **ITA No. 895/2007**

**COMMISSIONER OF
INCOME TAX**

..... Appellant

-versus-

**EASTMAN INDUSTRIES
LIMITED**

..... Respondent

Advocates who appeared in this case:

For the Appellant	:	Ms Prem Lata Bansal
For the Respondent	:	Mr Ajay Vohra with Ms Kavita Jha

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. | To be referred to Reporters or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

RAJIV SHAKDHER, J

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against a common judgment



dated 31.01.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) passed in ITA No. 1850/Del/2002 and ITA No. 4561/Del/2003 in respect of the same Assessee i.e. M/s Eastman Industries Ltd in respect of the assessment years 1998-99 and 2001-02.

2. The Revenue which is in appeal before us, has sought consideration by this Court, of the following questions of law, which according to the Revenue, are substantial in nature:-

- a. Whether Income Tax Appellate Tribunal was correct in allowing depreciation to the assessee @ 100% ignoring the material fact that the assets were entered in the books of accounts only after 30.09.1997?
- b. Whether assessee was entitled to depreciation @ 50% or @ 100% when the assets were entered in the books of accounts only after 30.09.1997?
- c. Whether Income Tax Appellate Tribunal was correct in law in holding that no short-term capital gain on transfer or block of assets could be taxed in the present case?
- d. Whether provisions of Section 50(2) are attracted in the present case so as to tax short-term capital gain on transfer of block of assets?"



3. In order to deal with the issues raised in the appeal, it would be necessary for us to record certain undisputed facts. The same are as follows:-

3.1 The assessee is in the business of export of cycle parts and light engineering goods. The Assessee, in respect of assessment year, 1998-99 had filed a return of income on 30.11.1998. In the said return, the total income was declared as 'nil' after the assessee had adjusted the brought forward losses.

3.2 During the course of assessment, the Assessing Officer, amongst others, raised queries with respect to the following issues:-

1st Issue

3.3 In respect of Assets purchased by the assessee from a partnership M/s Eastman Industries, on which, the Assessee had claimed 100% depreciation amounting to Rs 2,70,344/-; the Assessing Officer on examination of details produced before him found that the bills pertaining to the said assets taken over from the said partnership firm i.e., M/s Eastman Industries were entered in the books of the assessee only after 30.09.1997. Accordingly, the Assessing Officer was of the view that 50% of the depreciation



allowance, quantified at Rs 1,35,172/- had to be disallowed as the assets had been owned and used by the assessee for less than 180 days.

2nd Issue

3.4 On 16.06.1997 the Assessee had sold its office premises situate at Maker Chamber, 3, Nariman Point, Mumbai for a consideration of Rs 2,99,76,295/-. This being so, the Assessing Officer was of the view that the “block of assets” on which depreciation was allowed @ 10% had ceased to exist and hence, under the provisions of Section 50 (2) of the Act, the entire surplus amount received by the Assessee on the sale of the aforesaid office premises would be liable to ‘short term capital gains’. Accordingly, capital gain was calculated by the Assessing Officer by deducting the written down value of the ‘block of assets’ as on 01.04.1997 which appeared in the books at Rs 1,32,44,045/; from the sale consideration received by the Assessee amounting to Rs 2,99,76,295/-. Thus, the capital gains was quantified at Rs 1,67,32,250/-.



4. The aforesaid issues were decided by the Assessing Officer against the assessee. In so far as the first issue was concerned, the Assessing Officer disallowed 50% of the depreciation allowance claimed on the ground that the assets had been entered in the books of account in the relevant year after 30.09.1997 and since, they were used for less than 180 days, 50% of the amount quantified at Rs 1,35,172 was disallowed as depreciation.

5. As regards the second issue, even though the Assessing Officer was informed by the assessee that during the previous year 1997-98 which ended on 31.03.1998, it had purchased two premises – one, an office premises located at Andheri, Mumbai for Rs 75,52,982/-, and the other premises, situate at Prithvi Raj Road, Delhi for Rs. 1,09,96,112/- and hence, at the end of the previous year for the relevant assessment year, the ‘block of assets’ within the meaning of Section 50(2) of the Act was available as on 31.03.1998; the Assessing Officer did not deviate from his view. The Assessing Officer was of the opinion that the capital gain arose on 16.06.1997, as on that date, when, the office premises at Mumbai was sold, the ‘block of assets’ ceased to exist. Based on this reasoning the



Assessing Officer made an addition on account of capital gain to the extent of Rs 1,76,32,250/- to the assessee's total income.

6. Aggrieved by the aforesaid order of the Assessing Officer, the assessee preferred an appeal bearing No. 559/01-02 in respect of assessment year 1998-99 before the Commissioner of Income-tax (Appeals) (hereinafter referred as the CIT). By an order dated 13.02.2002, the CIT allowed the appeal of the assessee with respect to both the issues referred to hereinabove. The CIT with respect to first issue held that the Assessing Officer overlooked the fact that a challan dated 01.04.1997 had been filed by the assessee which, clearly established the fact that the assets had been transferred from the partnership firm i.e., M/s Eastern Industries to the assessee on 01.04.1997. The CIT also took into account the fact that the confirmation certificates were placed on record both by the transferor-partnership firm i.e., M/s Eastern Industries, as well as, the transferee i.e., the assessee. The CIT was of the view that the assessee, was entitled to 100% depreciation as, what was important, for claiming depreciation under Section 32 of the Act was the use of assets before 30.09.1997 and not the fact of the entry of the



transaction in the books of account. The CIT was of the view that evidence with regard to purchase of the Assets clearly established that the Assets had been put to use before 30.09.1997 and hence, the Assessee was entitled to 100% depreciation at the prescribed rates as given in the schedule.

7. In so far as the second issue is concerned, the CIT after noting the submission made on behalf of the assessee that no liability for capital gain arose as, during the course of previous year relevant to the assessment year under consideration, the assessee had purchased two more properties and hence, block of assets did not cease to exist at the end of the year - held that the issue was covered by the decision of Delhi Bench of the Tribunal in the case of *Oswal Agro Mills v. CIT of Special Bench : 51 ITD 447* and *Sutlej Cotton Mills v. CIT : 199 ITR 164* (Calcutta Special Bench).

8. Aggrieved by the decision of the CIT, Revenue preferred an appeal before the Tribunal. The Tribunal by the impugned judgment has sustained the order of the CIT. In brief, the reasons given by the Tribunal in the impugned judgment are set out, with respect to the



first issue, in paragraph No. 4.2, and with regard to the second issue in Paragraph Nos. 5 to 5.2.

Conclusions

9. Having considered the record of the case and the submissions made by both the learned counsel for the Revenue, as well, as the assessee, we are of the view that present appeal deserves to be dismissed in limini for the following reasons:-

1st Issue

10. As regards the first issue, we concur with the view of both the Tribunal, as well as, that of the CIT that the Assessing Officer had overlooked a crucial piece of evidence in the form of a challan which established, that the assets had been transferred from the partnership firm M/s Eastman Industries to the Assessee on 01.04.1997. It was no one's case that the assets had not been used during the relevant previous year. The Assessing Officer had disallowed 50% of the depreciation on the ground that the assets have been put to use after 30.09.1997, that is, for a period of less than 180 days. The CIT, as well as, the Tribunal has rightly noted



that once the said evidence is taken into account, then it cannot be said that the assets had been put to use after 30.09.1997. We concur with the view taken by both the CIT, as well as, the Tribunal. This is a finding of fact which does not call for interference by this Court.

2nd Issue

11. As regards the second issue, it would be important to note the provisions of Section 2 (11) of the Act and Section 50 of the Act. Section 2 (11) defines “block of assets”. The definition of “block of assets” has not materially changed from what it was between 1.4.1998 to 31.3.1999, to what it is, w.e.f. 1.4.1999. The definition of ‘block of assets’ between 1988 to 31.3.1999 was:-

“(11) ‘block of assets’ means a group of assets falling within a class of assets, being buildings, machinery, plant or furniture, in respect of which the same percentage of depreciation is prescribed.”

As from 1.4.1999 the definition is extracted hereinbelow:-

(11) "Block of assets" means a group of assets falling within a class of assets comprising - [(a) tangible assets, being buildings, machinery, plant or furniture; (b) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any



other business or commercial rights of similar nature, in respect of which same percentage of depreciation is prescribed.

12. Sub-Section 50 (2) of the Act, which is the provision under consideration, reads as follows:-

Section 50

SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS.

Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications :-

(1) xxxxxx xxxxxx xxxxxx xxxxx xxxxx

(2) Where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short-term capital assets.



13. Section 50 (2) of the Act is a special provision which provides for computation of ‘capital gains’ in respect of depreciable assets. Section 50 is a non-obstante provision which, inter alia, provides for imposition of short-term capital gains on account of transfer of depreciable assets forming part of “block of assets” notwithstanding the provisions of Section 2 (42A) to which sections 48 and 49 of the Act apply subject to the modifications contained in sub-section (1) (i) to (ii) of Section 50 of the Act.

14. A conjoint and a plain reading of the provision of Section 2 (11) and 50 (2) of the Act would show ‘block of assets’ as defined in Section 2 (11) of the Act means nothing but a group of assets falling in the same class in respect of which the same percentage of the depreciation is prescribed. Section 50 (2) of the Act comes into play only if assets of the same class ‘cease to exist’ for the reason that all assets in that block are transferred during the previous year.

14.1 The submission of the leaned counsel for the Revenue based on the reasoning of the Assessing Officer, is that: if, at any, particular point in time in the relevant previous year a class of assets ceases to exist, then in terms of Section 50(2), the surplus amount



received after adjusting thereto the cost of acquisition of assets as prescribed under the said provision shall be deemed to be the capital gain arising from transfer of short-term capital assets.

14.2 In the present case it is not disputed that the asset which was sold and those which were bought during the relevant previous year were in the same group, the same class and were amenable to same percentage of the depreciation – what is contended and very vociferously by the Revenue is that, if there is a hiatus between the sale of an asset and purchase of another asset, even though temporarily, then notwithstanding the fact that, at the end of the relevant previous year the ‘block of assets’ continues to subsist, capital gains would get attracted in terms of Section 50(2) of the Act subject to the fulfillment of other conditions prescribed therein. In a nutshell the Revenue contends that at no point of time during the course of a previous year can the ‘block of assets’ show a nil figure. Because no sooner it does, according to the Revenue, the provisions of Section 50(2) of the Act will come into play.

14.3 In our view the submissions of the Revenue will fly in the teeth of the provision. In this light let us examine the provision both



in terms of what triggers it and, the manner in which the capital gains are calculated.

14.4 First, the 'block of assets' cease to exist in accordance with sub-section (2) of Section 50 only when, 'all assets in that block are transferred 'during' the 'previous year'. The expression 'previous year' is preceded by the word 'during'. It is well settled that the intention of the legislature is best ascertained by resorting to the plain meaning of the words used in the legislation. The Black's Law Dictionary, 6th Edition gives the meaning of the word 'during' as:- 'throughout the course of ; throughout the continuance of; in the time of; after the commencement and before the expiration of'. The plain meaning of the word 'during' clearly indicates that the provision refers to transfer of assets in the block, in a defined period and not at any particular point in time. To ascertain what that defined period would be, one would have to look to the definition of 'previous year' as obtaining in the Act. The expression 'previous year' has been defined in Section 2(34) of the Act which provides that 'previous year' means the previous year as defined in Section 3 of the Act. Section 3 of the Act, in turn, defines 'previous year' as follows:- 'previous year' means the financial year immediately



preceding the assessment year. Though financial year is not defined, the Act defines 'Assessment Year' in Section 2(9) of the Act. Section 2(9) defines Assessment Year to mean the period of twelve months commencing on the 1st day of April of every year.

14.5. Thus, to our mind, it is only when the following conditions are fulfilled does Section 50(2) get triggered in:-

- i) all the assets in the block,
- ii) are transferred
- iii) throughout the course of or after the commencement and before the expiration of
- iv) the financial year of the assessee immediately preceding the assessment year.

14.6 A clearer indicator of the untenability of, the Revenue's submission, is demonstrable from the latter part of the provision of section 50(2) which provides the manner in which capital gains are to be arrived at. In order to do so, firstly, the cost of the acquisition of 'block of assets' is ascertained by taking the written down value of the 'block of assets' at the beginning of the previous year as increased by the actual cost of any asset falling within the 'block of assets' acquired during the previous year. Then, the income received



or accruing as a result of such transfer or transfers is deemed to be short term capital gains. A bare reading of the provision of subsection (2) of Section 50 of the Act would show that, the very fact that, there is a reference to, in arriving at the cost of acquisition, to the written down value of the 'block of assets' at the beginning of the previous year as increased by actual cost of assets falling within the 'block of assets' acquired during the previous year would show that what is required to be seen is that whether at the end of the previous year, the 'block of assets' have ceased to exist or, in other words what is to be seen is that whether 'throughout the course of' or 'after the commencement and before the expiration of the previous year' (i.e., the financial year immediately preceding the relevant assessment year) there was an asset which fell within the 'block of assets'. In the event the block of assets i.e., a class of asset(s) bearing same rate of depreciation exist(s) was with the assessee at the end of the previous year, then the provision of Section 50 (2) would not apply.



15. The purpose of enactment of Section 50 is driven home by a reference to the Finance Minister's Budget speech for the year 1986-87. The relevant part is extracted hereinbelow:-

“..... As promised in the Long Term Fiscal Policy Statement, I propose to introduce a system of allowing depreciation in respect of block of assets instead of the present system of depreciation on individual assets. *Simultaneously, I propose to rationalize the rate structure by reducing the number of rates as also for providing the depreciation at higher rates so as to ensure more than 80 per cent of the cost of plant and machinery is written off in a period of 4 years or less.* This will render replacement easier and help modernization. Apart from those items which are eligible for 100 per cent depreciation in initial year itself, there are at present different rates for plant and machinery. *I propose to have only two rates of depreciation at 33-1/3 per cent and 50 per cent.* Plant and machinery used in anti-pollution devices and those using indigenous know how are proposed to be replaced in a block carrying the higher rate of depreciation of 50 per cent. Building meant for low-paid employees of industrial undertakings will be entitled depreciation at 20 per cent



as against the general rate of 5 per cent for residential buildings and 10 per cent for non-residential buildings.”

Pursuant to the above announcement, amendments have been made to Sections 2, 32 32A, 34, 35, 38, 41, 43, 50, 55, 57, 59 and 155 of the Income Tax Act.

As mentioned by the Economic Administration Reforms Commission (Report No. 12, para. 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate bookkeeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record keeping. Moreover, the practice of granting the terminal allowance as per Section 32(1)(iii) or taxing the balancing charge as per Section 41(20) of the Income Tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of



lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture.....

Under the new system, the written down value of any block of assets may be reduced to nil for any of the following reasons:-

(A)The moneys receivable by the assessee in regard to the assets sold or otherwise transferred during the previous year together with the amount of scrap value may exceed the written down value at the beginning of the year as increased by the actual cost of any new asset acquired, or

(B)All the assets in the relevant block may be transferred during the year. Section 50 of the Income-tax Act prescribing the manner in which the cost of acquisition in the case of depreciable assets may be computed for the purposes of determining the capital gains has been substituted by new provisions by the Amending Act to take care of both the above situations. The particulars of these provisions, overriding section 2(42A) of the Income-tax Act, are as under:-



(A) The newly substituted section 50(1) provides that in a case where any block of assets *does not cease to exist* but the full value of the consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the following amounts, namely:-

- (i) Expenditure incurred wholly or exclusively in connection with such transfer or transfers;
- (ii) The written down value of the block of assets at the beginning of the previous year; and
- (iii) The actual cost of any asset falling within the block of assets acquired during the previous year.

Such excess shall be deemed to be short-term capital gains.

(B) The newly substituted section 50(2) of the Income-tax Act deals with the cases where any block of assets *ceases to exist for the reason that all the assets in that block are transferred during the previous year. In such a case, the cost of acquisition of the block of assets shall be the written down value of the block at the beginning of the previous year as*



increased by the actual cost of any asset falling within that block acquired by the assessee during the previous year. The income from such transfer or transfers shall be deemed to be short-term capital gains.....”

16. The Section creates a deeming fiction. It cannot be extended beyond the purpose for which it has been enacted. The section is a special provision, which provides for bringing to tax by way of short term capital gains depreciable assets which are transferred during the previous year as against those provided in Section 2 (42A). As noted by the Tribunal, as well as, the CIT that sub-section (2) of Section 50 of the Act provides for the computation of capital gains where ‘block of assets’ ceases to exist “for the reason that all the assets in the block are transferred in the previous year”. In the instant case, all the assets had not been transferred during the previous year because of the fact that some assets still remained in the block at the end of the year. This fact, as noted by the Tribunal, is not disputed. In our view, in the circumstance, that the assets were available in the ‘block of assets’ at the end of the previous year, the provision of



Section 50 (2) will not be applicable, as held by both the Tribunal and the CIT.

17. In the circumstance, no substantial question of law has arisen for our consideration. The appeal is dismissed.

RAJIV SHAKDHER, J

BADAR DURREZ AHMED, J

September 16, 2008
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