

## CNK & Associates LLP

- Provisions related to Succession of Business will be applicable to Purchaser Company acquiring an undertaking under slump sale scheme.
- Depreciation to be allocated on pro-rata basis usage of assets even in case of slump sale - **Mumbai Tribunal**

Flash: Judicial Update

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## Summary

*The Mumbai Tribunal, in a recent case has held that provisions of Section 170(1) of the Income Tax Act, 1961 would be applicable to the assessee company acquiring the assets under a business transfer agreement by way of slump sale. Further, it has held that depreciation on assets acquired under slump sale has to be apportioned between the seller and purchaser on a pro-rata basis in the ratio of number of days of use of the assets. The difference between the fair value of assets acquired and the WDV of such assets to the transferor to be considered as Goodwill.*

## Facts

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- The assessee company had entered into an Agreement for Transfer of Business (BTA) through which it had acquired an undertaking under slump sale scheme. The assets acquired under the BTA were incorporated as additions to the various block of assets, the fair value of such assets having been considered as the cost of acquisition.
- The Assessing Officer (AO) held that the purchase amounted to succession of business and therefore, the provisions of Section 170(1) of the Act would be applicable. Further to which, the AO held that in respect of the assets acquired under the BTA, the assessee company would be entitled to only such proportion of depreciation, as would be determined on the number of days' usage in accordance with the provisions of the fifth proviso to Section 32(1). This resulted in certain disallowance to the assessee. Aggrieved, the assessee preferred an appeal with the CIT(A).

## Brief

- The CIT(A) agreed with the assessee's stand that its case was not of succession of business as covered by the provisions of Section 170(1). He further observed that fair market value of the assets acquired should be adopted as cost of acquisition (COA). For certain assets where the fair market value (FMV) adopted by the assessee was lower than the written down value (WDV) to the transferor, he directed the AO to adopt the WDV to the transferor as COA.
- Against the order of the CIT(A), the assessee and revenue are in cross appeal before the Tribunal.

## Observations & Ruling of the Mumbai Tribunal

- The provisions of Section 50B prescribe the mode of charging the profits / gains arising out of slump sale, which is a specie of transfer by way of sale. Since section 50B does not cover the issue of depreciation, the general provisions pertaining to it would be applicable.

Depreciation on assets acquired under slump sale will be apportioned on the basis of number of days' usage to the seller and the purchaser. The difference between the FMV of assets acquired under slump sale and their WDV to the seller was to be treated as payment towards goodwill by the purchaser. It will be eligible for consequent depreciation. In support of this, reference was made to the ratio in the case of *Arevat T&D India Ltd*<sup>1</sup> of the Delhi High Court where it held that the excess amount paid over and above the tangible assets for acquisition of various business and commercial rights under slump sale can be categorised under the head goodwill.

- In so far as the issue of applicability of section 170(1) was concerned it held that based on facts, the assessee had acquired assets under a BTA, and hence succeeded the transferee company.

## CNK Comments

The Mumbai Tribunal in this case has ruled that depreciation in case of slump sale shall be apportioned in the ratio of number of days' usage of the asset, as in the case of other business restructuring. This implies that in the year of execution of slump sale, depreciation would be determined basis WDV to the transferor. In view of this, the purchaser will not be entitled to depreciation for the differential component (FMV-WDV) under the

respective block of asset. The ruling further states that such differential amount is to be treated as goodwill, eligible for depreciation, in the year of slump sale and subsequent years.

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<sup>1</sup> *Arevat Et D India Ltd Vs DCIT* (2012) 20 taxmann.com 29 (Delhi)

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