Resulting company eligible for accumulated losses claimed in revised return: Kolkata ITAT

Issued on: 24 June 2020

Summary

Kolkata bench of Income Tax Appellate Tribunal (ITAT) has, in a recent ruling, held that taxpayer is entitled to claim the set off of accumulated losses transferred after demerger, by way of a revised tax return if all associated conditions[1] have been fulfilled.

The ITAT rejected tax department's claim that the revised return was invalid as it was filed after the issue of intimation[2] by observing that it was not possible for the taxpayer to file a revised return before receipt of the high court's order sanctioning the demerger.

Facts of the case

- The taxpayer[3] is engaged in the business of mining. During assessment year 2010-11 (AY11), it filed its original return of income showing total income of INR 8.68 crore.
- The taxpayer and M/s SYK[4] filed a joint petition[5] before the Calcutta and Bombay High Court for the demerger of 'Vortal' division of M/s SYK into the taxpayer.
- The scheme of demerger was approved[6] by the respective high courts of Kolkata and Mumbai with appointed date fixed at 1 March 2010 (falling within AY11).
- In the meantime, the tax department issued an intimation[7] to the taxpayer accepting the returned income.
- Thereafter, the taxpayer filed a revised return[8] showing income of 'nil' after adjustment of accumulated losses of 'Vortal' division.
- Subsequent to filing of revised return, the case was selected[9] for scrutiny assessment.
- In the assessment order, the tax officer refused to take cognisance of the revised return where accumulated losses and unabsorbed depreciation of 'Vortal' division was adjusted by the taxpayer.

[1] as prescribed by section 72A (4) of the Income-tax Act, 1961 (Act)
[2] under section 143(1) of the Act
[3] M/s. Padma Logistics & Khanij Pvt. Ltd. (ITA No. 606/Kol/2018)
[4] M/s. Star Ya Kalakaar.com Limited
[5] on 13 September 2010 and 6 October 2010 respectively
[6] on 8 March 2011 and 21 April 2011 respectively
[7] under section 143(1) of the Act dated 14 April 2011
[8] on 9 June 2011
[9] notices under section 143(2) and 142(1) of the Act on 29 August 2011 was issued and again a notice under section 142(1) of the Act dated 16 October 2012 was issued

- The taxpayer filed an appeal against the order of the tax officer before the Commissioner (Appeals) [CIT(A)] where taxpayer's appeal was allowed.
- Aggrieved by the order of CIT(A), the tax department preferred an appeal before the ITAT.

Tax department's contention

- **No mention of the demerger in the audited accounts:** The tax department contended that the there was no mention of the scheme of demerger being pending before the high courts in the audited accounts of the taxpayer.
- **Loss return not filed within prescribed time:** The tax department further argued that the taxpayer did not file the return of loss with the prescribed timeline[10] and hence the same could not be accepted.
- **Revised return submitted after intimation[11]:** The tax department also submitted that the revised return was filed after the intimation was issued against the taxpayer and hence the revised return could not be said to be filed on time[12].
- **Loss claimed both by the demerged and the resulting company:** The tax department also argued that both the demerged company and the resulting company have claimed the same loss resulting in double claim of set off and carry forward of losses pertaining to the demerged undertaking.

Taxpayer's contention

- **Fact of demerger disclosed in the notes to accounts:** The taxpayer pointed out that the fact that the demerger application was pending was duly reported in the notes to accounts to the financial statements.
- **Taxpayer filed a 'nil' return of income and not a 'loss return of income':** The taxpayer submitted that it had filed a 'nil' revised return of income and not a loss return, as misunderstood by the tax officer.
- **No double benefit:** The taxpayer submitted letter given by M/s SYK Ltd to its tax officer, wherein it has clearly stated that the brought forward losses of the demerged undertaking gets transferred to the taxpayer and thus to that extent, M/s. SYK shall not be entitled to take the benefit of brought forward losses relating to the demerged undertaking. Along with the letter, SYK had also submitted the revised computation of income wherein business losses and unabsorbed depreciation relating to the demerged undertaking was not carried forward to the subsequent years.

[10] under section 139(3) of the Act
[11] under section 143(1) of the Act
[12] as required by section 139(5) of the Act

ITAT's observations and order

- The ITAT perused the notes to accounts and rejected tax officer's assertion that there was no mention of the pending demerger in the audited accounts of the taxpayer.
- The ITAT observed that the taxpayer filed the revised return only after the receipt of the high court's order. In this regard, the ITAT noted that the taxpayer could not have filed the revised return and consequently claim the brought forward losses before the high court's order.
- It also noted that the high court's order clearly stated that the losses of the demerged undertaking will be available to the taxpayer. Thus, the ITAT concluded that the provision relating to loss return[13] would not apply since the brought forward losses (of the 'Vortal' division) got vested after the high court's order.
- The ITAT rejected tax department's argument that the right to file revised return gets extinguished once intimation has been issued to the taxpayer, especially in the case where assessment has been completed after the date of revised return. Accordingly, the ITAT held that the taxpayer has filed the revised return within the stipulated time frame.
- The ITAT also noted M/s SYK's revised computation foregoing the brought forward losses of the demerged undertaking.
- The ITAT held that all the stipulated conditions[14] have been fulfilled. Accordingly, it rejected tax officer's objections and held that the taxpayer is eligible to claim the set off of brought forward losses transferred from M/s. SYK.

Our comments

The ruling is a welcome decision and brings clarity on the aspect of set off of brought forward losses and unabsorbed depreciation transferred pursuant to a demerger. The losses transferred on demerger are not the losses earned by the resulting company in earlier years and hence, is not subject to filing of a loss return provisions under the Act.

As long as the revised return of income is filed within the prescribed timelines and the associated conditions are complied with, the losses can be carried forward and set off by the resulting company.

[13] section 139(3) of the Act

[14] stated in section 72A(4) read with section 2(19AA) of the Act

Contact us

To know more, please visit **www.grantthornton.in** or contact any of our offices as mentioned below:

NEW DELHI
National Office
Outer Circle
L 41 Connaught Circus,
New Delhi 110 001
T +91 11 4278 7070

NEW DELHI
6th floor,
Worldmark 2, Aerocity,
New Delhi – 110 037
T +91 11 4952 7400

AHMEDABAD
7th Floor, Heritage
Chambers, Nr. Azad
Society, Nehru Nagar,
Ahmedabad – 380 015

BENGALURU
5th Floor, 65/2, Block A,
Bagmane Tridib, Bagmane
Tech Park,
C V Raman Nagar,
Bengaluru – 560 093
T+91 80 4243 0700

CHANDIGARH
B-406A, 4th Floor, L&T
Elante office Building
Industrial area, Phase-I,
Chandigarh 160 002
T +91 172 4338 000

CHENNAI
7th Floor, Prestige
Polygon 471, Anna
Salai, Teynampet
Chennai - 600 018
T +91 44 4294 0000

DEHRADUN
Suite No 2211, 2nd Floor
Building 2000
Michigan Avenue, Doon
Express Business Park,
Subhash Nagar,
Dehradun 248 002
T +91 135 264 6500

GURGAON
21st Floor DLF Square
Jacaranda Marg,
DLF Phase II,
Gurgaon 122 002
T +91 124 462 8000

HYDERABAD
7th Floor, Block III
White House Kundan Bagh,
Begumpet
Hyderabad 500 016
T +91 40 6630 8200

KOCHI
7th Floor, Modayil Centre
Point, Warriam Road
Junction, MG Road,
Kochi 682 016
T +91 484 406 4541

KOLKATA
10C Hungerford Street
5th Floor,
Kolkata 700 017
T +91 33 4050 8000

MUMBAI
16th Floor, Tower II
Indiabulls Finance Centre
SB Marg, Prabhadevi (W)
Mumbai 400 013
T +91 22 6626 2600

MUMBAI
Kaledonia, 1st Floor,
C Wing (Opposite J&J
office) Sahar Road,
Andheri East,
Mumbai - 400 069
T +91 22 6176 7800

NOIDA
Plot No. 19A,
7th Floor Sector – 16A,
Noida 201 301
T +91 120 4855 900

PUNE
3rd Floor,
Unit No 309 to 312, West
Wing, Nyati Unitree
Nagar Road, Yerwada
Pune- 411 006
T +91 20 6744 8800

For more information or for any queries, write to us at **contact@in.gt.com**

Follow us @GrantThorntonIN

Grant Thornton