

Demerger expense amortisation claim allowed in initial years, cannot be questioned in later years if no material change in facts: Kolkata ITAT

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Summary

Kolkata bench of Income Tax Appellate Tribunal (ITAT) has, in a recent case, allowed taxpayer's claim of amortisation of demerger expenses¹. The ITAT rejected tax department's contention that demerger was incomplete as the leasehold property, on which the hotel was situated, was not registered in the name of the transferee.

On perusal of the demerger scheme, the ITAT observed that the condition for vesting the leasehold property with the taxpayer was merely seeking 'approval' from Government of West Bengal. The demerger was not conditional upon the 'registration' of the leasehold property in the name of the taxpayer. Thus, the ITAT held that since Government of West Bengal had approved, the demerger was complete and amortisation of expenses allowed.

Facts of the case

- The taxpayer¹ is engaged in the business of running a hotel and investment in shares and securities including those of subsidiary companies for furtherance of its hotel activities.
- Pursuant to a scheme of demerger approved by the Delhi High Court², a Kolkata-based hotel ('undertaking') stood transferred³ to the taxpayer.
- As per the scheme, all the assets and liabilities (including profits and losses from the appointed date to the end of the year) of the undertaking stood transferred to the taxpayer from the Appointed date.
- Further, as per the scheme, there was a pre-condition that the said scheme was conditional upon obtaining approval of the Government of West Bengal for vesting of the leasehold property belonging to the undertaking to the taxpayer.

¹ M/s Asian Hotels (East) Ltd. (I.T.A. Nos. 114 to 116/Kol/2019)

² on 13 January 2010 which became effective from 11 February 2010 having appointed date of 31 October 2009

³ From Asian Hotels Limited

- The West Bengal government⁴ granted permission for the transfer of leasehold rights of the said property to the taxpayer subject to payment of fees amounting to INR 10.90 crore. The taxpayer deposited⁵ the required fee.
- The taxpayer incurred expenses amounting to INR 11.32 crore in connection with the demerger, which were amortised⁶ in five annual instalments starting from assessment year (AY) 2010-11. This amortisation was allowed by the tax department both for AY 2010-11 and AY 2011-12.
- However, in AY 2012-13, the tax officer disallowed the amortisation claim on the ground that one of the pre-conditions for making the Scheme effective was that the property should be registered in the name of the taxpayer, which has not been fulfilled and therefore the demerger is not complete.
- The taxpayer filed an appeal against the order of the tax officer. The Commissioner (Appeals) [CIT(A)] allowed the taxpayer's appeal.
- Aggrieved by the order, the tax department filed an appeal before the Kolkata ITAT.
- Before the ITAT, the tax department argued that as per the scheme, condition of registration of leasehold property in the name of taxpayer was not completed and hence the demerger was incomplete. Thus, the taxpayer would not be eligible to amortise demerger expenses.
- Conversely, the taxpayer contended that there was no requirement to register the leasehold property in its name. The only condition was to obtain approval from West Bengal Government for transfer of the leasehold property and the same was done after paying requisite fees.

⁴ Department of Urban Development, Government of West Bengal

⁵ on 18 December 2009

⁶ i.e. Rs.2.32 Crores per year as per section 35DD of the Act

ITAT's observations and order

- The ITAT agreed with the taxpayer's argument that there was nothing mentioned in the scheme that required 'registration' of the leasehold property in the name of the taxpayer.
- The ITAT further observed that the only condition for 'vesting' the leasehold property with the taxpayer was obtaining approval from Government of West Bengal, which the taxpayer had obtained.
- The ITAT noted that in the past two years, the amortisation claim had been allowed. In this regard, it referred to a Supreme Court⁷ ruling that held an amortisation claim allowed in one year could not be denied in the other year in the absence of change in any material facts. Thus, it held that amortisation claim granted to the taxpayer in the initial year could not be denied in the subsequent years.

Our comments

The judgment clearly establishes that in case of expenses to be amortised over a certain number of years, the deduction allowed in the initial years cannot be disallowed in the subsequent years unless there is a material change in facts, i.e., the revenue cannot change its stand with respect to deductions allowed previously. The judgment is also another positive precedent on the issue of allowing deduction of demerger expenses, which has been a matter of ambiguity in the past.

⁷ M/s Shashun Chemical & Drugs Ltd.

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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

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