



Brand name acquired before amalgamation is eligible for depreciation

Background

Recently, the Chennai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Emerald Jewel Industry India Ltd¹ (the taxpayer) held that the taxpayer is eligible to claim depreciation on the brand value. Merely because there was subsequent amalgamation cannot be a ground that the taxpayer has not acquired any brand name. When the taxpayer acquired the brand name by making payment through banking channel before amalgamation, the taxpayer is eligible to claim depreciation.

Facts of the case

- The taxpayer is engaged in the business of manufacturing and sale of gold and diamond jewellery, silver articles and other related business. During the Assessment Year (AY) 2011-12, the taxpayer was also engaged in derivatives through multi commodities exchange.
- In the course of its business activity, the taxpayer acquired an intangible asset, namely a brand called 'Ishtaa'. The funds were transferred through banking channel. The taxpayer claimed depreciation on the said intangible asset.
- The Assessing Officer (AO) held that the brand 'Ishtaa' was owned by Ishtaa Gold Jewellery Pvt. Ltd., which is an associate company of the taxpayer. Subsequently, the company itself was amalgamated with the taxpayer. On reference to the scheme of amalgamation, the AO observed that intellectual property rights were also transferred to the taxpayer. Therefore, there is no requirement to purchase the brand name separately by excluding

all assets. After amalgamation, the taxpayer is claiming set off of huge losses of the amalgamated company. The AO held that it is a colourable device for the purpose of reducing the tax effect by claiming depreciation on the brand value. Hence, the AO denied the claim of depreciation. A similar claim was disallowed by AO in AY 2010-11.

Tribunal's ruling

- Mere claiming set off of loss suffered by the amalgamated company cannot be a reason to disallow the claim of the taxpayer for depreciation. Explanation 3 to Section 32 of the Income-tax Act, 1961 (the Act) specifically provides that the brand name, the intangible asset is also one of the assets eligible for depreciation. Further, the payment for the acquisition of brand was paid through banking channel, which is not disputed by the tax department.
- When the taxpayer claims that the brand name 'Ishtaa' was acquired outside the scheme of amalgamation and the payment was also made, the Tribunal observed that the acquisition of brand name cannot be doubted especially when the payment was not in dispute.
- Merely because there was subsequent amalgamation cannot be construed as if the taxpayer has not acquired any brand name. When the taxpayer acquired the brand name by making payment through banking channel before amalgamation, the Tribunal is of the considered opinion that the taxpayer is eligible for depreciation as claimed.

¹ DCIT v. Emerald Jewel Industry India Ltd. (ITA No. 1811/Mds/2015) – Taxsutra.com

- Each AY is separate and distinct. Moreover, the order of the AO cannot be a bar on the Tribunal to appreciate the matter on merit. The Tribunal can go into the merit of the claim irrespective of the order of the AO for AY 2010-11. Therefore, merely because the taxpayer has not filed any appeal against the order of the AO for AY 2010-11 that cannot be a reason for rejecting the claim of the taxpayer.
- Therefore, the Tribunal held that the taxpayer is eligible for depreciation on the brand value acquired. Therefore, the AO is not justified in disallowing the claim of the taxpayer.

Our comments

In the instant case, the AO treated the taxpayer's transaction as a colourable device for the purpose of reducing the tax effect by claiming depreciation on the brand value and accordingly denied the claim of depreciation. However, the Chennai Tribunal observed that merely because there was subsequent amalgamation cannot be a ground that the taxpayer has not acquired any brand name. When the taxpayer acquired the brand name by making payment through banking channel before amalgamation, the taxpayer is eligible to claim depreciation. The acquisition of brand name cannot be doubted especially when the payment was not in dispute.

The General Anti-Avoidance Rules (GAAR) provisions are introduced in the Act with effect from Financial Year 2017-18. As per GAAR provisions, AO may treat the transaction as 'impermissible avoidance arrangement' if the main purpose of the transaction is to obtain a tax benefit. Accordingly, AO may disregard/combine/recharacterise whole/part of the arrangement. It would be interesting to see how the tax department will treat such type of transactions once GAAR provision comes into operation. Based on the facts of each case, this decision may help taxpayers in post GAAR scenario.



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