

# ***Profit on sale of rural agricultural land to be excluded from book profit for calculating MAT***

13 June 2014

## ***In brief***

The Cochin Income-tax Appellate Tribunal (Tribunal), in the case of **The Nilgiri Tea Estate Limited**, held that capital profit on sale of rural agricultural land had to be excluded for computing minimum alternate tax (MAT), having observed that section 115JB contained in Chapter XII-B did not extend to cover section 5 of the Income-tax Act, 1961 (the Act). Chapter XII-B only provided an alternate mechanism for computation of tax and could not be invoked to cover transactions which were not intended to be taxed.

## ***In detail***

### ***The facts***

The Nilgiri Tea Estate Limited<sup>1</sup> (Nilgiri Limited or taxpayer), sold agricultural land which formed part of one of its estates and credited the profit in its profit and loss account.

The gain on transfer was not taxable as per the normal provisions because rural agricultural land was excluded from the definition of capital assets under section 2(14) of the Act. The taxpayer had also excluded the profit when computing book profit for the purpose of MAT under section 115JB of the Act.

However, during the course of assessment proceedings, the Tax Officer (TO) added the

profit on sale of rural agricultural land in computing book profits. The TO took the view that since the profit was credited to the profit and loss account and there was no provision in section 115JB of the Act to exclude such profit when computing MAT, it should not have been excluded.

The taxpayer relied on the Cochin Tribunal judgement in *Harrisons Malayalam*<sup>2</sup>, in which profit on transfer of rural agricultural land was excluded for the purpose of both, normal provisions and MAT.

The taxpayer preferred an appeal before the Commissioner of Income-tax (Appeals) [CIT(A)]. The CIT(A) deleted the TO's addition.

The revenue filed an appeal before the Cochin Tribunal against this order.

### ***Issue before the Tribunal***

Whether the capital profit on the sale of rural agricultural land which had been credited to profit and loss account could be excluded for the purpose of computing book profit under section 115JB of the Act?

### ***Revenue's contention***

The revenue argued that gain on sale of rural agricultural land is not in the nature of agricultural income and there was no express provision in section 115JB of the Act to exclude such profit.

<sup>1</sup> The Nilgiri Tea Estate Ltd v. ACIT [TS-345-ITAT-2014 (COCH)]

<sup>2</sup> *Harrisons Malayalam Ltd v. ACIT* [2009] 32 SOT 497 (Cochin-Tribunal)

**Taxpayer's contention**

The taxpayer contended that gains on the sale of rural agricultural land was not taxable under the normal provisions of the Act in the first place and should not be included in the computation of book profit under section 115JB of the Act.

**Tribunal ruling**

The Tribunal dismissed the revenue's appeal and held as follows:

- Section 115JB of the Act could not operate beyond its scope and override section 5 of the Act, which was the charging section.
- Section 115JB only provided a mechanism which was an alternative to the normal provisions, and it could not go beyond the legislative intention and tax income which was out of the purview of income tax itself.

**The takeaway**

It is important to note that section 115JB of the Act begins with a *non-obstante* clause and deems the book profit of the company to be the total income under the Act. Computation of book profit under section 115JB of the Act is a self-contained code. In this context, the ruling is a bold, welcome one which reiterates the view of the coordinate bench in the taxpayer's own case and the Jaipur Tribunal's ruling in Shree Cement Ltd<sup>3</sup> that a capital receipt that is not taxable under the normal provisions of the Act cannot be taxed under section 115JB of the Act.

While the issue of taxability of capital receipts under section 115JB of the Act is pending before higher forums, the ruling is significant for taxpayers currently in litigation.

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<sup>3</sup> ACIT v. Shree Cement Ltd [2012-TIOL-02-ITAT-Jaipur]

**Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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