

Sale of asset, post appointed date, by amalgamating company, becomes transaction of the amalgamated company once amalgamation is approved

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In brief

In a recent decision, the Bangalore Income-tax Appellate Tribunal (Tribunal) has held short term capital gain (STCG) arising to the amalgamating company from the transfer of a block of assets, post appointed date, to be held good only until the time there was no amalgamation. Once the amalgamation was effected, all transactions post the appointed date would be treated as transactions of the amalgamated company (the taxpayer), and consequently, the transfer of assets would be treated as transfer by the taxpayer.

In detail

Facts

- The amalgamation of amalgamating company with the taxpayer with the appointed date of 1 April, 2002, was approved by the jurisdictional High Court by order dated 19 December, 2003.
- Post the appointed date, the amalgamating company had sold its block of assets resulting in STCG under section 50(1) of the Income-tax Act, 1961 (the Act). The amalgamating company had offered the gain for taxation in its original return of income.
- Post approval from the High Court, the taxpayer filed a revised return of income for assessment year (AY) 2003–04 giving effect to the order showing the total income to be loss.
- The tax officer (TO) disallowed a part of the claim on depreciation for want of requisite details.
- The taxpayer filed an appeal before the Commissioner of Income-tax (Appeals) [CIT(A)] for the claim of depreciation being disallowed.
- Pending the appeal, the TO rectified its order allowing depreciation on submission of requisite details.
- However, instead of disposing the case, the CIT(A) issued a show cause notice to the taxpayer for enhancing the assessment by including STCG, which was originally offered to tax

by the amalgamating company on sale of assets in the block.

Issue before the Tribunal

Whether the STCG arising on transfer of assets has to be re-assessed in light of the facts and impact of completion of amalgamation?

Revenue's contentions

- The amalgamating company had originally offered STCG in its return of income.
- Pursuant to the amalgamation, all the income of the amalgamating company would become the income of the amalgamated company and would be taxable in its hands.

- Post amalgamation, the taxpayer had not offered the STCG in its revised return.

Taxpayer's contention

The block of assets of the taxpayer was greater than the sale consideration of the assets sold by the amalgamating company. In addition, the block of assets was not extinguished. Therefore, there will be no STCG on that account.

Tribunal's decision

- It was undisputed that the merger was effected from the appointed date of 1 April, 2002.
- STCG, as per section 50(1) of the Act, arises if the full value of consideration on sale of the depreciable asset is more than the written down value of the block of assets at the beginning of the previous year, as increased by the cost of acquisition of the assets during the year, and the expenditure incurred wholly and exclusively in connection with such transfer.
- In case the block of assets ceases to exist on transfer of all the assets in said block for a consideration that is in excess of the written down value of the block of assets, then such excess shall be

deemed to be capital gains arising on transfer of the short-term capital asset.

- Although the amalgamating company sold its entire block of assets of plant and machinery during the relevant AY, post appointed date the said transfer would be treated as transfer by the taxpayer.
- It was undisputed that even after the transfer of the said assets the taxpayer still had balance in the block of assets of plant and machinery. Therefore, the conditions stipulated in section 50(1) of the Act were not satisfied to give rise to any capital gains in the hands of the taxpayer.
- It was undisputed that the taxpayer at the time of filing the revised return of income had claimed depreciation on the consolidated block of assets, and thereby, the claim of depreciation was reduced after giving effect to the transfer of assets in question.
- Although the transfer of the block of assets by the amalgamating company resulted in STCG, the same would exist until there was no amalgamation. Once the amalgamation was effected, all transactions thereafter would

be treated as transactions by the taxpayer.

- Thus, when the transfer of assets in question did not result in the extinguishment of block of assets of the taxpayer, it would not result in deemed capital gains under section 50(1) of the Act in the hands of the taxpayer.
- It was held that the enhancement made by the CIT(A) was not sustainable and was deleted.

The takeaways

This decision reiterates and upholds the concept of the appointed date, wherein once the amalgamation is approved by the appropriate authority, the transactions from the appointed date will be looked at as if the transaction was carried out by the amalgamated company. Tax and other implications will be re-computed on a consolidated basis and not be considered as aggregation of separate tax computation of the companies involved in the amalgamation.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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