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Transfer of business without monetary consideration not taxable as ‘slump sale’ under section 2(42C) of Income-tax Act, 1961

In brief

In a recent ruling in the case of Zinger Investments (P) Ltd¹ (assessee), the Income-tax Appellate Tribunal, Hyderabad (the Tribunal) has held that a transfer of business without monetary consideration would not be considered a slump sale under section 50B read with section 2(42C) of the Income-tax Act, 1961 (the Act). Accordingly, capital gains on such transfer would not attract any capital gains tax.

Facts

- The net worth of the assessee, as on 31 March, 2006 was INR 68.1 mn.
- The assessee transferred its manufacturing division to Novapan Industries Limited (Novapan) under a scheme of arrangement under sections 391 to 394 of the Companies Act.
- The scheme of arrangement was approved by High Court of Andhra Pradesh w.e.f. 1 April, 2006.
- As consideration for the transfer, Novapan allotted shares amounting to INR 68.1 mn to the assessee’s shareholders and transferred investments worth INR 252.4 mn to the assessee.

¹ ITO v. M/s Zinger Investments (P) Ltd [TS-437-ITAT-2013(Hyd)]

- The Assessing Officer (AO) held that the transfer of the manufacturing division amounted to a slump sale and the capital gains arising from the above transfer should be brought to tax under section 50B of the Act.
- The AO took the sum of the value of shares allotted i.e. of INR 68.1 mn and value of investments transferred i.e. INR 252.4 mn, as the consideration for the transfer. For computing long-term capital gains in the assessee's hands, the AO deducted cost of acquisition of INR 68.1 mn from the sales consideration.

Issue before the Tribunal

- Was the transfer of the manufacturing division to Novapan without monetary consideration a 'slump sale' within the meaning of section 2(42C) of the Act so as to attract the provision of section 50B of the Act?

Assessee's contentions

- The assessee contended that as part of the scheme of arrangement, there was no consideration received in terms of money value. Accordingly, transfer of the manufacturing division did not tantamount to sale.
- Section 50B of the Act applied only in case of transfer of an undertaking by way of sale, and not in the case of an arrangement between two companies under sections 391 to 394 of the Companies Act.
- The assessee relied on the Supreme Court (SC) decision in *Motors and General Stores*² wherein it was held that presence of money consideration was an essential element in a transaction of sale. Further, it had been held that where the consideration was not money, but rather any other valuable consideration, it may be deemed to be an exchange or barter.

²CIT v. Motors and General Stores Pvt Ltd [1967] 66 ITR 692 (SC)

- The assessee also relied upon the SC decision in *R.R. Ramakrishna Pillai*³ wherein it had been held that where a company transferred assets to another company in consideration of allotment of shares, it would be an exchange and not a sale.
- Further, the assessee also relied upon the Mumbai Tribunal decision in *Avaya Global Connection*⁴ wherein it had been held that a transfer of an undertaking otherwise than as a result of sale would not qualify as slump sale under section 2(42C) of the Act.

CIT(A)'s order

- A money consideration was an essential element of sale. As no money consideration had passed between the transferor and transferee in a scheme of arrangement under sections 391 to 394 of the Companies Act, the transaction would not amount to a sale.
- The assessee's transaction, under a scheme of arrangement under sections 391 to 394 of the Companies Act, was not a sale. Consequently, it did not fall within the definition of slump sale under sections 2(42C) of the Act and the provisions of section 50B of the Act were therefore not applicable.

Tribunal ruling

- The transfer of manufacturing division was carried out under a scheme of arrangement approved by the High Court of Andhra Pradesh.
- To qualify as slump sale under section 2(42C) of the Act, two conditions need to be satisfied *viz.*,
 - there has to be a transfer of one or more undertakings as a result of sale and

³ CIT v. R.R. Ramakrishna Pillai [1967] 66 ITR 725 (SC)

⁴ Avaya Global Connection v. ACIT [2008] 26 SOT 397 (Tribunal Mumbai)

- the sale has to be for a lumpsum consideration without value being assigned to the individual assets and liabilities.
- No money consideration was involved in the transfer of the manufacturing division. The Tribunal relied upon the SC ruling in *Motors and General Stores*² wherein it had been held that the presence of a money consideration was an essential element of a transaction of sale; and where the consideration was not money but some other valuable consideration, it may be an exchange or barter but not a sale.
- Further, the Tribunal relied upon the SC ruling in *R.R. Ramakrishna Pillai*³ and also the Tribunal ruling on *Avaya Global Connection*⁴ and held that the

transfer of the manufacturing division could not be considered a slump sale within the meaning of section 2(42C) of the Act. Accordingly, the above transfer should not attract tax under section 50B of the Act.

Conclusion

The Tribunal held that transfer of an undertaking without monetary consideration would not be considered as a sale within the meaning of section 2(42C) of the Act. Accordingly, such transfer would not attract tax under section 50B of the Act. However, it may be noted that the Tribunal did not consider whether the above transaction was chargeable to tax under section 45 of the Act.

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