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## **Taxpayer is eligible to claim depreciation on an asset not registered in its name, but under its dominion control, and utilised for its business purposes**

### **In brief**

In the case of Swagat Infrastructure Ltd.<sup>1</sup> (the taxpayer), the Ahmedabad Income-tax Appellate Tribunal (Tribunal) held that depreciation on assets cannot be denied to the taxpayer as long as it is proved that the asset is under its dominion control, and is being utilised for business purposes, even though the taxpayer is not a registered owner of the asset.

### **Facts**

- The taxpayer was engaged in the business of construction and property developers.
- The taxpayer claimed depreciation on vehicles registered in the name of the director of the company. The consideration of the vehicle was paid by the taxpayer.
- The Tax Officer (TO) disallowed the claim of depreciation on the grounds that the taxpayer was not the owner of these vehicles.

<sup>1</sup> Swagat Infrastructure Ltd. v. JCIT [TS-287-ITAT-2013(Ahd)]

- The Commissioner of Income Tax (Appeals) confirmed this view of the TO.

### **Issues before the Tribunal**

Whether the taxpayer is entitled to claim depreciation on vehicles registered in the name of its Director?

#### **Assessee's contentions**

- A resolution was passed by the company to purchase and register these vehicles in the name of the Director of the company.
- The vehicles were utilised for business purposes and had been shown in the block of assets.

#### **Revenue's contentions**

- The taxpayer was not the owner of the vehicles, and hence was not entitled to claim depreciation on the same.
- The taxpayer was unable to provide details to substantiate that the vehicles were utilised for business purposes.

#### **Tribunal Ruling**

- The Tribunal observed that Supreme Court<sup>2</sup> (SC) has enlarged the scope of the word 'own' and held that the words used in the Act should be assigned such meaning as would enable the taxpayer to secure the benefit intended to be given by the legislature. The SC further observed that the benefit of depreciation legitimately belongs to one who has invested in the capital asset, was utilising the capital asset and would need to replace the same by having lost its value fully over a period of time.

- The taxpayer in this case, has to be entitled to depreciation since the vehicles are under the dominion control of the taxpayer and are being utilised for business purposes.

#### **Conclusion**

The Tribunal reaffirmed the principle that taxpayers shall be entitled to claim depreciation on assets which are not registered in its name, but are used for its business purposes.

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<sup>2</sup> Mysore Minerals Ltd. v. CIT [1999] 239 ITR 775 (SC)

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## Our offices

<p><b>Ahmedabad</b> President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000</p>	<p><b>Bangalore</b> 6th Floor, Millenia Tower 'D' 1 &amp; 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000</p>	<p><b>Chennai</b> 8th Floor, Prestige Palladium Bayan 129-140 Greams Road, Chennai 600 006, India Phone +91 44 4228 5000</p>	<p><b>Hyderabad</b> #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600</p>	<p><b>Kolkata</b> 56 &amp; 57, Block DN. Ground Floor, A- Wing Sector - V, Salt Lake. Kolkata - 700 091, West Bengal, India Telephone: +91-033 - 2357 9101/4400 1111 Fax: (91) 033 - 2357 2754</p>
<p><b>Mumbai</b> PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000</p>	<p><b>Gurgaon</b> Building No. 10, Tower - C 17th &amp; 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000</p>	<p><b>Pune</b> GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444</p>	<p>For more information contact us at, <a href="mailto:pwctrs.knowledgemanagement@in.pwc.com">pwctrs.knowledgemanagement@in.pwc.com</a></p>	

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