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TAX TRIBUNAL ALLOWS MAT CREDIT UPTO THE APPOINTED DATE TO THE DEMERGED COMPANY

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Introduction

In a recent case, *The Deputy Commissioner of Income-tax v TCS E-Serve International Limited* dated 28 August 2019, the Mumbai Bench of the Income Tax Appellate Tribunal (Tribunal) has allowed a demerged company to continue to avail Minimum Alternate Tax (MAT) credit pertaining to its demerged SEZ units even after the demerger. The Tribunal has relied on the Bombay High Court's order sanctioning the scheme of demerger which provided that the taxes including income tax paid or payable upto the appointed date shall remain only with the Taxpayer. In doing so, the Tribunal reiterated the accepted legal position that once the demerger scheme is sanctioned, it gets a statutory recognition and would apply as 'operation of law' in the absence of any specific provision under the Income-tax Act, 1961 (IT Act).

Background

TCS E-Serve International Limited (the Taxpayer or Demerged Company), was engaged in the business of providing Information Technology enabled services (IT/ITES), Business process Outsourcing Services (BPO) for its customers in the banking financial services and insurance space. The Board of Directors of the Taxpayer proposed a demerger of its three SEZ units located at Chennai, Gurgaon and Kolkata to TATA Consultancy Services Limited (TCS Ltd) by a demerger scheme which was duly approved by the Bombay High Court with effect from 01 April 2013.

The Taxpayer when filing its income tax return, considered the total unutilized MAT credit upto the appointed date for set-off and carry forward as such which also included the MAT credit pertaining to the demerged SEZ units.

The Income Tax Authority (Assessing Officer), however, disallowed the MAT credit pertaining to the demerged SEZ units and allowed only the balance MAT credit to the Demerged Company. The Taxpayer filed appeal with the first level appellate authority (CIT(A)), who decided the issue in the Taxpayer's favour. Thereafter, the Assessing Officer filed an appeal before the second level appellate authority (Tribunal).

Ruling

The Tribunal rejected the contentions of the Assessing Officer and held that the Taxpayer is entitled to set off and carry forward MAT credit pertaining to its demerged SEZ units based on the following:

- The Bombay High Court in its order approving the scheme of demerger had categorically held that all the taxes, including the income tax paid or payable before the appointed date i.e. 01 April 2013 shall be to the account of the Taxpayer and after the date of appointment, will be to the account of TCS Ltd.
- The Tribunal relied on the ruling of the Bombay High Court in *Sadanand S. Varde v State of Maharashtra* [2001] 247 ITR 609 (Bom) to state that as per the settled position of law, any scheme sanctioned by the Hon'ble High Court gets a statutory recognition and would apply as the 'operation of law'. In view of the specific directions of the Bombay High Court with respect to the taxes and in the absence of any specific provision under the IT Act in respect of carry forward and set off of MAT credit in respect of demerger, the MAT credit would need to be allowed to the Demerged Company even though the same had arisen on account of its SEZ units.
- The Tribunal also noted that TCS Ltd being the resulting company had not claimed credit of MAT in its return of income and its (TCS Ltd.'s) Assessing Officer while passing the assessment order had categorically stated that MAT credit of the SEZ units demerged to TCS Ltd will continue with the Taxpayer (i.e. TCS E-serve International Ltd) only.

Comments

While this is a welcome ruling clarifying an issue for which there is no express provision in the IT Act, we note that the Ahmedabad Bench of the Tribunal in *Adani Gas Ltd v Assistant Commissioner of Income Tax* (ITA No. 2516/Ahd/2011) had allowed pro-rata apportionment of *inter alia*, MAT credit between the demerged and resulting company.

In view of the conflicting views expressed by different benches of the Tribunal, any position with regard to claiming MAT credit in relation to a demerged undertaking should be carefully evaluated by Taxpayers.

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