

Long term capital loss is available for set-off in the hands of the successor amalgamated company: ITAT Pune

Capgemini Technology Services India Limited (ITA No. 1857 & 1935/PUN/2017)

Facts:

1. Rs.104,46,39,309/- was long term capital loss of the erstwhile ICSL which got amalgamated with the assessee company on the first day of the financial year under consideration.
2. On being called upon to explain as to how such long term capital loss could be allowed set off against the assessee's income, it was submitted that the amalgamation took place w.e.f. 01-04-2012 and the Scheme of amalgamation, as approved by the Hon'ble High Court, provided through para 10(f) that the loss etc., of the amalgamating company shall be available to the amalgamated company.
3. The AO took note of the provisions of section 72A of the Income Tax Act, which provide for the set off and carry forward only of the brought forward loss and unabsorbed depreciation of the amalgamating company in the hands of the amalgamated company. He found such provision as not covering long term capital loss. He also did not find any force in the contention of the assessee about the applicability of section 74 of the Act.

ITAT Pune held as below:

1. Sec 72A is not a panacea for all the tax related issues of amalgamation, so as to have application in so far as the other tax entitlements, privileges or benefits in the hands of the amalgamating company, are concerned.

2. As per Sec 74, the amount of long term capital loss, not set off as per the relevant provisions, is carried forward to the following assessment years and so on for set off.

3. In view of the fact that the business of the amalgamating company under amalgamation continues uninterrupted by the amalgamated company, the benefit of such carry forward and set off earned by the business of the amalgamating company has to be allowed as per the mandate of section 74 to the amalgamated company, more so, when the Scheme of amalgamation as approved by the Hon'ble High Court specifically declares that benefits, inter alia, under tax laws 'shall be transferred and vest in the Transferee Company..... as if the Transferee Company was originally entitled to all benefits'.