Notional depreciation not allowable while computing value of assets for wealth tax

A plausible manner in which WDV of an asset, thus, may be reckoned for the purpose of r. 14 is to reduce the depreciation at the rate as prescribed for the relevant block of the assets, i.e., under which the said asset falls, for the years for which depreciation has actually been allowed since its acquisition (though on the relevant block), to arrive at its' WDV as at the relevant year-end, and which incidentally brings us to the second aspect of the matter. That is, whether notional depreciation, i.e., neither claimed or allowed, could be taken into account or consideration for the purpose of computing the WDV of the relevant asset as at the year-end. In our view, it cannot be. The reason is simple. As afore-noted, the term is not defined under the Act, so that its definition under the IT Act, which we have found to be the relevant statute, is to be adopted. We find the term to be unambiguously defined therein. The relevant provision provides for depreciation as 'actually allowed' to be reduced in computing the WDV. The expression 'actually allowed' has itself again been subject matter of consideration by the higher courts of law, explaining it to mean the depreciation as actually allowed as against notionally so, so that the matter has to be treated as well-settled and trite. Reference in this context may be made to the decisions by the hon'ble apex court in the case of *CIT* v. *Straw Products Ltd.* [1966] 60 ITR 156 (SC); *CIT* v. *Dharampur Leather Co. Ltd.* [1966] 60 ITR 165; and *CIT* v. *Doom Dooma India Ltd.* [2009] 310 ITR 392 (SC). As such, no depreciation that has not been actually allowed, could be reduced to arrive at a notional WDV, as against one with reference to the depreciation actually allowed, i.e., as statutorily provided. The assessee's claim in this regard, even as observed by the Bench during hearing, thus, cannot be acceded to, and stands rightly declined by the Revenue.

So, however, at the same time, as explained by the assessee, it has only one car (Mitsubishi Lancer) with it as on the relevant valuation date (31.03.2005), purchased during the previous year relevant to A.Y. 2001-02 at a cost of Rs.10,37,648/-. How could it's WDV exceed the same, or, equivalently, how could the cost (or even the WDV) of other cars (whether domestic or foreign) be either relevant or taken into account for the purpose of determining it's WDV? Though the assessee has clarified this fact before the A.O. (vide its letter dated 10.08.2010 / refer para 2.1 of the assessment order), and is also apparent from the statements filed before the authorities below, we observe no finding by them thereon; both the assessee and the Revenue moving on the premise that it has to value a 'block' of foreign cars, i.e., without reference to and de hors the actual holding of such cars with it as at the valuation date. It is the WDV of such contrived or presumed block of assets that in their view had to be considered or taken into account, so that the dispute stood confined to how it's WDV is to be computed. The same is rendered of no consequence in view of our finding the same as irrelevant and inapplicable. As such, subject to the necessary verification by the A.O. of the assessee's claim (of holding only one car as on the valuation date), and for which we restore the matter back to his file, only the foreign car/s owned by the assessee as on 31.03.2005 could be considered for the purpose of being subject to tax. Further, no deprecation having been admittedly either claimed or allowed on any foreign car, its actual cost has to be considered as its WDV as at the year-end (31.03.2005).

IN THE ITAT MUMBAI BENCH 'WT'

Venus Records & Tapes (P.) Ltd.

v.

Assistant Commissioner of Wealth-Tax, Mumbai

WT No. 72 (Mum.) of 2011
[ASSESSMENT YEAR 2005-06]

JANUARY 23, 2013

ORDER

Sanjay Arora, Accountant Member – This is an Appeal by the Assessee agitating the Order by the Commissioner of Wealth Tax (Appeals)-3, Mumbai ('CWT(A)' for short) dated 01.08.2011, dismissing the assessee's appeal contesting its assessment under section 16(3) r.w.s 17 of the Wealth Tax Act, 1957 ('the Act' hereinafter) vide order dated 13.09.2010.

2.1 The short question arising in the instant appeal is the value of the foreign cars owned by the assessee-company that is to be adopted for the purpose of their taxation under the Act, being taxable asset/s thereunder; the assessee-company having, in the view of the Revenue, under-valued the same.

2.2 The assessee, while admitting to the application of rule 14 of Schedule III to the Act, presses for their value at Rs.16,36,419/-, i.e., the Written Down Value (WDV) of the relevant block of assets as at the year-end (31.03.2005), worked out by reducing the depreciation as exigible from the aggregate value of the different (four) cars, considering them as constituting a separate block, arrived at by adding their respective costs, i.e., as incurred on their acquisition, less the monies realised on their sale, i.e., as and when foreign cars stood purchased and sold as the case may be. The reduction of depreciation is from A.Y. 2001-02 (i.e., the year in which the first such car stood acquired) to the relevant year (A.Y. 2005-06). The Revenue, on the other hand, disputes the reduction of the depreciation so deducted (worked out at

Rs.21,51,416/- by the assessee), on the ground that no depreciation on these cars had been either claimed or allowed for the said years under the Income Tax Act, 1961 ('the I.T. Act' hereinafter), so that the same could not be considered for the purpose of working out their WDV as on 31.03.2005. Interestingly, both the assessee and the Revenue rely for the purpose of their different claims on the 'Global Valuation Method' as advocated by Rule 14, Schedule III to the Act.

3. We have heard the parties, and perused the material on record.

3.1 Rule 14, in its relevant part, being pertinent, is reproduced as under:-

"Sch. III

PART D

ASSETS OF BUSINESS

Global valuation of assets of business.

14. (1) Where the assessee is carrying on a business for which accounts are maintained by him regularly, the net value of the assets of the business as a whole, having regard to the balance-sheet of such business on the valuation date after adjustments specified in sub-rule (2) shall be taken as the value of such assets for the purposes of this Act.

(2) For the purposes of sub-rule (1) -

(*a*) the value of any asset as disclosed in the balance-sheet shall be taken to be,-

(*i*) in the case of an asset on which depreciation is admissible, its written-down value;

(*ii*) in the case of an asset on which no depreciation is admissible, its book value;

(*iii*) in the case of closing stock its value adopted for the purposes of assessment under the Income-tax Act for the purposes of assessment under the Income-tax Act for the previous year relevant to the corresponding assessment year;"

3.2 No depreciation was admissible on foreign cars up to A.Y. 2001-02. However, w.e.f. A.Y. 2002-03, the same is exigible thereon, just as it is on the indigenous cars. As such, without doubt, it is the WDV and not the book value of the foreign cars, being the relevant assets, as at the valuation date, which is to be considered under rule 14. We may, at the outset, clarify that the validity of application of r. 14 for valuation of the taxable assets is not in dispute, so that the same is confined to the determination of valuation thereof as per its terms. The term 'WDV' is not defined either under the Act or the Rules framed thereunder. As such, the term as defined under the Income Tax Act, 1961 ('the I.T. Act' hereinafter) would have to be considered and applied. This is all the more so as the depreciation 'admissible', as understood under the Act for the purpose of rule 14, is the depreciation under the I.T. Act. Section 43(6)(b) of the said Act defines WDV of an asset as its actual cost less depreciation actually allowed. However, w.e.f. 01.04.1988, there has occurred a significant change in the method and manner in which depreciation is allowed under the I.T. Act. The depreciation, instead of on an asset, is allowed on a block of assets. The depreciation rate is also accordingly provided for a 'block of assets' (also referred to as a 'block' in this order), which is itself defined as one for which a particular rate of depreciation stands prescribed under the said Act and the rules framed there-under, as further falling under any of the principal category of assets, viz. Building, Plant and Machinery, Furniture and Fittings, and Ships. The foreign cars (as well as the domestic cars) would, thus, fall under the category 'plant and machinery' as a separate block, being entitled to depreciation @ 20%, i.e., at a rate different than the general rate of 25% applicable to plant and machinery. The same would, thus, include domestic cars as well; the distinction in the origin of manufacture being no longer valid under the said Act. The sale value of any asset forming part of the block is to be reduced on its sale, while adding the cost of any fresh acquisition to the block, and on which adjusted value the prescribed rate of depreciation is to be applied. Reducing the depreciation thus worked out would yield the WDV of the block as at the end of the year, and which would form the opening WDV for the succeeding year, and in respect of which the same method would apply, and is to be followed. As no depreciation has actually been admittedly allowed, having been, rather, not claimed, the reduction for depreciation from their actual cost in reckoning the WDV of the foreign cars under the Act, as being claimed by the assesse, has not been accepted by the Revenue.

3.3 Our first observation in the matter is that the concept of block of assets is relevant only to ascertain the deprecation exigible or admissible and, consequently, determine the WDV thereof. The value of any asset under rule 14, on the other hand, is to be taken qua each separate business asset of the assessee. Now, how could the cost or sale value of assets, either taxable or non-taxable, other than the relevant taxable asset, is either relevant or could be taken into account in working out its WDV? The same, i.e., the concept of block of assets, when applied to individual assets, would in fact lead to grotesque results. We cite an example to underscore the same, even as one could consider or conceive of several such, demonstrating the absurd results that could arise. Consider a set of two cars, costing Rs.20 lakhs and Rs.5 lakhs (say). The same are taken as constituting the relevant block. The former is sold for Rs.4 lakhs (say). The value of the block on which depreciation would be admissible is Rs.21 lakhs, while the only taxable asset would be one car costing Rs.5 lakhs. Reducing the depreciation @ 20% on Rs. 21 lakhs would yield a WDV of Rs. 16.8 lacs, exceeding the actual cost of the only car as on the valuation date.

The two concepts, i.e., the 'block of assets' (and its WDV) and the WDV of an individual assets, with which we are concerned, are per se irreconcilable, being designed for separate ends. While it is the individual, actual assets, representing the assessee's wealth, that are liable to be taxed under the Act, the 'block' is a notional concept; rather, value, on which depreciation at the prescribed rate is to be applied to yield the depreciation exigible under the IT Act. The same may have no bearing on or correspondence with the actual assets with the assessee, or their value, though is relevant inasmuch as it yields the depreciation 'actually allowed'. In fact, both the assesse as well as the Revenue have not even followed the 'block of assets' as would stand to arise under the IT Act, as the same would include indigenous cars as well, but only a contrived block, consisting only of foreign cars.

3.4 A plausible manner in which WDV of an asset, thus, may be reckoned for the purpose of r. 14 is to reduce the depreciation at the rate as prescribed for the relevant block of the assets, i.e., under which the said asset falls, for the years for which depreciation has actually been allowed since its acquisition (though on the relevant block), to arrive at its' WDV as at the relevant year-end, and which incidentally brings us to the second aspect of the matter. That is, whether notional depreciation, i.e., neither claimed or allowed, could be taken into account or consideration for the purpose of computing the WDV of the relevant asset as at the year-end. In our view, it cannot be. The reason is simple. As afore-noted, the term is not defined under the Act, so that its definition under the IT Act, which we have found to be the relevant statute, is to be adopted. We find the term to be unambiguously defined therein. The relevant provision provides for depreciation as 'actually allowed' to be reduced in computing the WDV. The expression 'actually allowed' has itself again been subject matter of consideration by the higher courts of law, explaining it to mean the depreciation as actually allowed as against notionally so, so that the matter has to be treated as well-settled and trite. Reference in this context may be made to the decisions by the hon'ble apex court in the case of *CIT* v. *Straw Products Ltd.* [1966] 60 ITR 156 (SC); *CIT* v. *Dharampur Leather Co. Ltd.* [1966] 60 ITR 165; and *CIT* v. *Doom Dooma India Ltd.* [2009] 310 ITR 392 (SC). As such, no depreciation that has not been actually allowed, could be reduced to arrive at a notional WDV, as against one with reference to the depreciation actually allowed, i.e., as statutorily provided. The assessee's claim in this regard, even as observed by the Bench during hearing, thus, cannot be acceded to, and stands rightly declined by the Revenue.

So, however, at the same time, as explained by the assessee, it has only one car (Mitsubishi Lancer) with it as on the relevant valuation date

(31.03.2005), purchased during the previous year relevant to A.Y. 2001-02 at a cost of Rs.10,37,648/-. How could it's WDV exceed the same, or, equivalently, how could the cost (or even the WDV) of other cars (whether domestic or foreign) be either relevant or taken into account for the purpose of determining it's WDV? Though the assessee has clarified this fact before the A.O. (vide its letter dated 10.08.2010 / refer para 2.1 of the assessment order), and is also apparent from the statements filed before the authorities below, we observe no finding by them thereon; both the assessee and the Revenue moving on the premise that it has to value a 'block' of foreign cars, i.e., without reference to and de hors the actual holding of such cars with it as at the valuation date. It is the WDV of such contrived or presumed block of assets that in their view had to be considered or taken into account, so that the dispute stood confined to how it's WDV is to be computed. The same is rendered of no consequence in view of our finding the same as irrelevant and inapplicable. As such, subject to the necessary verification by the A.O. of the assessee's claim (of holding only one car as on the valuation date), and for which we restore the matter back to his file, only the foreign car/s owned by the assessee as on 31.03.2005 could be considered for the purpose of being subject to tax. Further, no deprecation having been admittedly either claimed or allowed on any foreign car, its actual cost has to be considered as its WDV as at the year-end (31.03.2005). We direct accordingly.

3.5 We are conscious, when we state of the in-application of the WDV of a block of assets, that the same, even assuming that all the assets comprising the said block for the time being are taxable under the Act, would still not match or agree with the aggregate of their individual WDVs worked out in the manner being advocated by us (refer para 3.4). The question, however, to our mind is more basic and fundamental, and the difference in the two values is only a consequence or manifestation of following the concept of block of assets in determining the WDV of the individual, or even a group of assets which are taxable under the Act. The said difference, with reference to an example, was cited by us only to emphasize the incongruity that arises on following, if we may say so, rather mechanically, two unrelated concepts, i.e., the WDV of an asset and the WDV of a block of assets. The fundamental objection aforesaid lies in disturbing or adjusting the 'value' of an asset with reference to the cost or sale value, as the case may be, of 'other asset/s', which is alien to the concept of valuation of an asset, which is or is to be subject to tax. It is this 'fallacy' that forms the basis of our holding that the concept of 'block of assets' would not apply for the purpose of valuation of an asset/s under the Act. A possible manner in which the WDV of the asset can therefore be determined is to adopt and apply the admissible rate of depreciation over the period since its acquisition for which depreciation stands actually allowed to it (or, more correctly, on its value, as forming part of a block of assets), so that the same stood suggested for being followed.

Further, even where the entire 'block' is taxable, as assumed by us, with each of the assets comprising it during it's (block's) life being also liable to tax, i.e., for the period for which it was held and formed part of the block, the objection to adopting the WDV of the said block u/s. 43(6)(c) of the IT Act as the WDV of the relevant assets u/r. 14 of the Act survives (even though the difference between the two values, i.e., that u/s. 43(6)(c) (supra) and the value arrived at adopting the method as suggested by us, may be substantially diluted). This (objection) is again for the reason that the WDV to be adopted for the purpose of r. 14 is qua each individual asset and not the block of assets. Continuing further, toward this, in our view, the WDV of the individual assets comprising the block would have to be determined from the inception of the block. The depreciation thereon allowed since would have to be appropriated or allocated among the individual assets constituting it for the time being. The WDV of the assets constituting the block, thus determined, that stand to be sold or discarded in time, and thus though no longer forming part of the block, i.e., physically, would have to be computed by reducing their sale value or the monies realized on being discarded, individualizing the determination of the WDV of the block on an asset wise basis. The WDV of such assets though would be relevant only for the purpose of arriving at the quantum of depreciation on the said block and, thus, on the assets comprising the block for the time being (inasmuch as it is this depreciation, being actually allowed, that stands therefore to be allocated). The WDV of the assets, whether existing or sold and discarded, thus, shall have to be computed, which is only the segregation of the WDV of the block among its constituents, including those no longer existing or in service. The purpose is to arrive at the depreciation admissible and actually allowed in a manner that enables its proper and correct allocation over the individual, existing assets, physically comprising the block for the time being. The WDV of such sold or non-serviceable assets may well be negative, as where the sale value of an asset exceeds its WDV immediately prior to its sale, decreasing the depreciation exigible on the block rather than increasing it. That, however, would be of little moment inasmuch as the adjusted value of such 'assets', i.e., the value arrived at by deducting the sale value from their individual WDVs as obtaining immediately prior to their sale, is only for the purpose of reckoning the value on which depreciation rate is to be applied and, thus, the quantum of depreciation for any year, i.e., the depreciation allowed, which is to be then reduced from the WDV of the existing assets on a pro-rata basis to arrive at their individual WDVs as at the end of any year.

We are aware, when we suggest so, that the depreciation that stands to be deducted in computing the WDV of a depreciable (taxable) asset is no longer directly linked to its cost and, consequently, it's WDV, inasmuch as the depreciation deducted, being the proportionate depreciation allowed, includes that worked out with reference to the depreciation on the value, positive or negative, as the case may be, qua the assets sold or discarded, i.e., their respective WDVs as further adjusted by the monies realised on their sale or on being discarded. However, it needs to be appreciated that, firstly, the depreciation to be deducted can only be the depreciation actually allowed as against a notional one, and which is since only with reference to a 'notional' value of a block that has no direct relation with the WDVs of the individual assets comprising it. Secondly, the depreciation allowed, though with reference to a deemed value, is only on the assets actually comprising the block for the time being. If there were to be no assets in a block as at the end of any year, the entire such value, positive or negative, would stand to be written off or back as the case may be, resulting in short term capital loss or capital gain to the assessee. That is, the depreciation allowable, though with reference to an artificial value, is still conceptually only on the extant assets comprising the block, so that it would have to apportioned between them (of course, up to and till their WDV remains positive) to arrive at their individual WDVs, where, as in the instant case, the same may be required to be determined, and which is the purport of the present discussion.

The procedure aforesaid would alone satisfy the mandate of the Act and enable an application of r. 14 in view and light of the method and manner of determining the depreciation exigible and, thus, the depreciation admissible and actually allowed under the IT Act, which is to be reduced in arriving at the WDV of the individual assets that are subject to tax. The same would be equally applicable where some of the assets forming part of the block are not taxable, as the domestic cars in the instant case, as the WDV of each asset (e.g. motor car) would stand to be determined separately. The same, i.e., the said procedure, is without doubt superior to that suggested for being followed by us vide para 3.4 above, inasmuch as the allocation is of the depreciation 'actually allowed', which is again only on a pro-rata basis, and substantially aligns the WDVs of the individual assets with the WDV of the block.

However, as would be apparent, there is no occasion to apply the same, i.e., the said method, in the instant case as no depreciation has admittedly been allowed on the any foreign car and, thus, on the foreign car/s held by the assesse as on the relevant valuation date, whose value u/r. 14 is to be determined. Where then is the need for allocation of the depreciation actually allowed (which figure is available on a block basis) on such cars, which would, if so, have to be deducted from their respective actual costs to arrive at their respective WDVs. Our direction at para 3.4 would thus continue to be valid and represent our decision insofar as the present case is concerned. The enlisting of the same, i.e., the procedure and method afore-stated, by us is only with a view to, and for the purpose of the completeness of the discussion in the matter and, thus, of this order. We decide accordingly.

4. In the result, the assessee's appeal is allowed.