

1. **Advances paid for purpose of purchase and/or acquisition of plant/machinery, and land/building amount to utilization by assessee of capital gains under section 54G -**

A reading of section 54G makes it clear that the assessee is given a window of three years after the date on which transfer has taken place to 'purchase' new machinery or plant or 'acquire' building or land. The High Court has completely missed the window of three years given to the assessee to purchase or acquire machinery and building or land. This is why the expression used in section 54G(2) is 'which is not utilized by him for all or any of the purposes aforesaid...'. It is clear that for the assessment year in question all that is required for the assessee to avail of the exemption contained in the section is to 'utilize' the amount of capital gains for purchase and acquisition of new machinery or plant and building or land. It is undisputed that the entire amount claimed in the assessment year in question has been so 'utilized' for purchase and/or acquisition of new machinery or plant and land or building. Under sub-section (1), the assessee is given a period of three years after the date on which the transfer takes place to purchase new machinery or plant and acquire building or land or construct building for the purpose of his business in the said area. If the High Court is right, the assessee has to purchase and/or acquire machinery, plant, land and building within the same assessment year in which the transfer takes place. Further, the High Court has missed the key words 'not utilized' in sub-section (2) which would show that it is enough that the capital gain made by the assessee should only be 'utilized' by him in the assessment year in question for all or any of the purposes aforesaid, that is towards purchase and acquisition of plant and machinery, and land and building. Advances paid for the purpose of purchase and/or acquisition of the aforesaid assets would certainly amount to utilization by the assessee of the capital gains made by him for the purpose of purchasing and/or acquiring the aforesaid assets. Therefore on this ground also, the assessee is liable to succeed. The appeals are, accordingly, allowed and the judgment of the High Court is set aside. **Fibre Boards (P.) Ltd.v. CIT, [2015] 62 taxmann.com 135 (SC)**

2. **No addition can be made in respect of sundry creditors while making assessment under section 44AF.**

A perusal of section 44AF clearly shows that the opening words in the said section are 'notwithstanding anything to the contrary contained in sections 28 to 43C'. A perusal of the provisions of section 43B shows that the opening words are 'notwithstanding anything contained in any other provisions of this Act'. As per the provisions of section 44AF admittedly once the presumptive tax provisions are applied, the income of the assessee is fixed at 5 per cent of the total turnover. The *non obstante* clause in section 44AF is not the only words that call for interpretation. When the presumptive tax rate is applied under section 44AF, the said sum equalling 5 per cent of the total turnover is deemed to be the profit and gains of such business chargeable to tax under the head 'Profits and gains of business or profession'. It only means that the deduction allowable under sections 28 to 43C is deemed to have been already granted to

the assessee. This is because the said provisions under sections 28 to 43C are provisions relating to the computation of business income of the assessee. However, a perusal of the provisions of section 43B shows that the said provision is a 'restriction' on the allowance of a particular expenditure representing statutory liability and such other expenses claimed in the profit and loss account unless same has been paid before the due date of filing the return. The statutory liability in the present case has not been paid before the due date of filing the return. Further, the *non obstante* clause in section 43B has a far wider amplitude because it uses the words 'notwithstanding anything contained in any other provisions of this Act'. Therefore, even assuming that the deduction is permissible or the deduction is deemed to have been allowed under any other provisions of this Act, still the control placed by the provisions of section 43B in respect of the statutory liabilities still holds precedence over such allowance. This is because the dues to the crown have no limitation and have precedence over all other allowances and claims. In these circumstances, the disallowance made by the Assessing Officer by invoking the provisions of section 43B in respect of the statutory liabilities are in order even though the assessee's income has been offered and assessed under the provisions of section 44AF. So far as the addition representing the sundry creditors is concerned admittedly the same cannot be made in the hands of the assessee when applying the provisions of section 44AF. This is because once the presumptive tax provision is applied, then the books of account are deemed not to be available for the purpose of computation of the profit and gains of the business. Consequently, the addition representing the sundry creditors as made by the Assessing Officer and as confirmed by the Commissioner (Appeals) is liable to be deleted. **Good Luck Kinetic v. ITO [2015] 172 TTJ 268 (Panaji – Trib)**