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RESEARCH & DEVELOPMENT **Flash News**

Taxation

Benefit of weighted deduction on in-house Research and Development expenditure is allowed from the year in which the taxpayer has filed an application and not when it is approved by Govt. of India/Deptt.

Recently, the Delhi High Court in the case of Sandan Vikas (India) Ltd.¹ held that the taxpayer was eligible to claim weighted deduction on in-house Research and Development (R&D) expenditure from the year in which the taxpayer made an application to the Govt. of India/Deptt. The High Court observed that the provisions of the Income-tax Act, 1961 (the Act) does not suggest or imply that the cut-off date mentioned in the certificate issued by the Govt. of India/Deptt will be the cut-off date for eligibility of weighted deduction on the expenditure incurred on in-house R&D to avail benefit of Section 35(2AB) of the Act.

Background

As per section 35(2AB)(1) of the Act, the taxpayer engaged in the biotechnology or in the business of manufacturing or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing² and incurring expenditure on approved in-house R&D facility, are eligible for weighted deduction of 150 percent³ of the capital expenditure (except on land and building) and revenue expenditure as approved by the Govt. of India/Deptt.

¹ CIT v. Sandan Vikas (India) Ltd. (ITA No. 348 of 2011)

(Judgement date: 24 February 2011, Assessment Year: 2005-06)- Details are Available on Request

² The Finance Act 2009 extended this benefit to the taxpayer who are engaged in the business of manufacture or production of any article or thing other than items specified in Eleventh Schedule of the Act with effect from Assessment Year 2010-11.

³ The Finance Act 2010 increased the weighted deduction to 200 percent from Assessment Year 2011-12.



Facts of the case

- The taxpayer was engaged in the business of manufacturing of automotive air conditioning and was undertaking research and development activity in that regard. The taxpayer approached DSIR vide application dated 10 January 2005, to certify the research and development activities.
- The Govt. of India/Deptt vide its letter dated 23 February 2006 granted recognition of in-house R&D facilities and also granted approval for the expenditure incurred by the taxpayer on in-house R&D facility.
- For the assessment year 2005-06 the taxpayer claimed a deduction of INR 38,362,003 under Section 35(2AB) of the Act.
- However, the Assessing Officer (AO), refused to grant the benefit of weighted deduction to the taxpayer on the ground that recognition and approval was given by the Govt. of India/Deptt in February 2006, i.e. in the next assessment year and, therefore, the taxpayer was not entitled to the benefit. The CIT(Appeal) upheld the AO's order.
- However, the Income-tax Appellate Tribunal (the Tribunal), relying on the decision of the Gujarat High Court in the case of Claris Lifesciences Ltd., held that the taxpayer would be entitled to weighted deductions of the aforesaid expenditure incurred under Section 35(2AB) of the Act.

High Court's ruling

- The High Court observed that in the Claris Lifesciences Ltd.⁴ held that the provisions of the Act nowhere suggest or imply that the cut-off date mentioned in the certificate issued by the Govt. of India/Deptt. will be cut-off date for eligibility of weighted deduction on the expenditure incurred.
What is to be seen is that the taxpayer was indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by Govt. of India/Deptt is issued, that would be sufficient to hold that the taxpayer fulfilled the conditions laid down in the aforesaid provisions.
- In view of above, the High Court held that the taxpayer was eligible for the weighted deduction of the R & D expenditure incurred for the Assessment Year 2005-06.

Our Comments

This is a welcome ruling by the Delhi High Court which has allowed the weighted deduction on R&D facility under Section 35(2AB) of the Act from the year in which the application by the taxpayer was filed with the Govt. of India/Deptt.

⁴ **CIT v. Claris Lifesciences Ltd. [2010] 326 ITR 251 (Guj)**

Interestingly, the Govt. of India/Deptt. guidelines also suggests that the approval granted pursuant to an application made anytime during a particular year, would be effective from the first day of the April in which the application is made and any qualifying expenditure incurred from that date would be eligible for weighted deduction.

It is pertinent note that the Delhi High Court in a recent decision in the case of Apollo Tyres Ltd.⁵ had held that the weighted deduction on in-house R&D expenditure under Section 35(2AB) of the Act is allowed only from the year in which the petitioner has made an application and entered into an agreement with the Govt. of India/Deptt.

Further, the Mumbai Tribunal in the case of MECO Instruments Pvt. Ltd.⁶ held that even though the approval was not available in the prescribed form for the relevant assessment year, the taxpayer was still entitled to deduction for in-house R & D expenditure. The Tribunal also held that it was only a procedural defect and merely on the ground of technicalities of procedure, the benefit bestowed by legislature cannot be denied.

ALL DETAILS ARE AVAILABLE ON REQUEST

⁵ Apollo Tyres Ltd. v. UOI [2010- TIOL -279-HC-DEL -IT]

⁶ ACIT v. MECO Instruments Pvt. Ltd. [2010-TIOL-563-ITATMUM]