

Delhi HC affirms that allowance of additional depreciation is mandatory under income tax provisions

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In brief

In a recent decision,¹ the Delhi High Court (HC) held that Explanation 5 to section 32(1)² of the Income-tax Act, 1961 (Act), which provides for mandatory claim of depreciation, is also applicable to additional depreciation allowable under section 32(1)(iia) of the Act. Accordingly, the HC held that the claim of additional depreciation is mandatory under the provisions of the Act.

In detail

Facts

- The taxpayer filed its return of income, wherein it had claimed normal depreciation as well as additional depreciation under section 32(1)(iia) of the Act.
- During the assessment proceedings, the taxpayer filed a letter before the tax officer (TO) to withdraw the claim for additional depreciation and claim enhanced deduction under section 80-IB of the Act.
- The TO, relying on Explanation 5 to section 32(1) of the Act, rejected the taxpayer's contention and allowed the claim of additional depreciation.

- On further appeal, the Income-tax Appellate Tribunal (Tribunal) upheld the order of the TO. Aggrieved, the taxpayer filed an appeal before the Delhi HC.

Issue before the Delhi High Court

Whether the Tribunal was correct in holding that the TO was justified in granting additional depreciation under section 32(1)(iia) of the Act, read with Explanation 5 to section 32(1) of the Act?

Taxpayer's contentions

- Additional depreciation under section 32(1)(iia) of the Act is like an incentive, therefore it cannot be treated at par with normal depreciation (on account of normal wear and tear or

obsolescence) and be imposed on the taxpayer.

- Explanation 5 was inserted below section 32(1)(i) and (ii) of the Act, and thus, does not apply to additional depreciation allowable under section 32(1)(iia).
- Section 32(1)(iia) of the Act was inserted with effect from 01 April, 2003 whereas Explanation 5 was inserted with effect from 01 April, 2002. Thus, the expression "*this sub-section*" in Explanation 5 only refers to section 32(1) sub-clauses (i) and (ii) of the Act.

High Court's decision

The Tribunal while passing its order analysed as follows –

- Section 32 of the Act is

¹ ITA No. 303/ 2018 order dated 19 March 2018

² Explanation 5 to Section 32(1)(ii) of the Act provides that "*for the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the taxpayer has claimed the deduction in respect of depreciation in computing his total income.*"

captioned “depreciation” and encompasses various sub-sections and clauses, including clauses (ii) and (iia). Thus, it is not correct to contend that relief provided under section 32(1)(iia) of the Act is a separate incentive and not depreciation.

- The claim for additional depreciation was allowed as further deduction under section 32(1)(ii) of the Act, and hence, there was no separate provision for allowing additional depreciation under the Act to render the provisions of Explanation 5 inoperative.

- Text and the context of the word “shall,” as employed in clause (iia), mandates the claim of additional depreciation under clause (ii), which automatically attracts Explanation 5, providing for mandatory deduction of depreciation.

The Delhi HC upheld the order of the Tribunal and mentioned that the plain text of the explanation and intention of the statute leaves no doubt that Explanation 5 is applicable in the instant case, and that the deduction for depreciation, including additional depreciation, would be allowable, whether or not the taxpayer had

claimed it. Accordingly, the Delhi HC dismissed the taxpayer’s appeal, opining that no question of law arose on this aspect.

The takeaway

This decision affirms the position that the claim of additional depreciation, is a mandatory allowance under the provisions of the Act, whether or not the taxpayer has claimed such deduction.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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