

## **Public issue exp. disallowed by HC as amount raised through such issue wasn't spent for capital expansion**

**Summary – The High Court of Madras in a recent case of Tube Investments of India Ltd., (the Assessee) held that where no proof existed to show amount raised through public issue was used for capital expansion, disallowance of expenses on public issue was valid**

### **Facts**

- The assessee raised capital from issue of Global Depository Receipts (GDR) to fund new projects/extension of their existing facilities. It incurred certain expenses for GDR issue. It claimed deduction for 1/10th of said expenses for each of the assessment years on ground that it incurred expenses on different units over a period of years.
- The Assessing Officer restricted deduction only for one unit on ground that fund flow statement of the assessee showed most of the GDR receipts had been utilized for working capital requirements.
- The Tribunal upheld the order of the Assessing Officer.
- On appeal before the High Court:

### **Held**

- Section 35D enables amortization of specified preliminary expenses, which are otherwise not admissible deductions. Expenditure on issue of shares for public subscription is one such expenditure. Section 35D applies in two circumstances; (i) pre-business expenses, *i.e.*, expenses incurred before the commencement of business and (ii) expenses incurred in connection with the extension of industrial undertaking or in connection with setting up a new industrial unit by an establishment which is already in business.
- The assessee submitted that when the claim was allowed for one year, there is no reason to refuse the deduction for the consecutive year. This contention would be legally correct, provided, the deduction had been claimed for the consecutive year in respect of the same unit.
- The assessee had claimed deduction in respect of successive units over a period of time; one unit during 1995-96, another unit during 1996-97 and yet another unit during 1997-98. There is also a finding that there is no proof to show that the amount raised through GDR issue had been used for the capital expansion over a period of so many years. On these findings, the Assessing Officer has chosen to grant deduction only in respect of one unit, namely, for the unit established in 1995-96 and disallowed the deduction in respect of other units. Therefore, there is no reason to differ the findings of the Tribunal.