

Assessee was bound to claim additional dep. irrespective of fact that entire income was exempt u/s 80-IA

Summary – The High Court of Delhi in a recent case of Vedanta Ltd., (the Assessee) held that Additional depreciation is to be deducted irrespective of fact that assessee's claim for deduction under section 80-IB would be increased by same amount

Facts

- In the revised return, the assessee claimed depreciation amounting to Rs. 503.24 crore. Apart from this, the assessee also claimed additional depreciation of Rs.538.66 crore. However, during the course of assessment proceedings, the assessee withdrew the claim of additional depreciation. Resultantly, the original deduction claim under section 80-IB shot up by the said amount of additional depreciation.
- The Assessing Officer allowed the claim of additional depreciation by relying on *Explanation 5* to section 32(ii) and also holding that the judgment of the Supreme Court in *Goetze India Ltd. v. CIT [2006] 284 ITR 323/157 Taxman 1 (SC)* ruled out claims during the course of assessment proceedings after the completion of the time for filing revised return.
- The Tribunal held that the claim of additional depreciation was a compulsory allowance under section 32(iia) and the same was mandatory.
- In the instant appeal, the assessee argued that additional depreciation under section 32(1)(iia) is in the nature of an incentive and cannot, therefore, be treated as mandatory at par with normal depreciation allowed on account of wear and tear and obsolescence. The assessee further urged that *Explanation 5* was inserted below section 32(1)(i) and (ii) and, thus, applies to normal depreciation only. The assessee further argued that section 32(1)(iia) is in the nature of an incentive providing for accelerated depreciation and, hence, cannot be imposed upon the assessee.

Held

- The plain text of the relevant *Explanation 5* leaves no room for admitting the interpretive gloss that the assessee wishes to place over it. There can be a multitude of circumstances where, but for the provision, the incentive, available to all those for whom the benefit of additional depreciation was intended, could have been deprived of it. Undoubtedly, the amount of the assessee's claim for section 80-IB deduction increased, when it sought to withdraw the additional depreciation claim. However, that single circumstance should not influence this Court to ignore the plain intendment of the statute, since the Parliament clearly stated that the provisions of 'this sub-section '(1)' would apply 'whether or not the assessee has claimed the deduction in respect of depreciation in

computing his total income'. This Court cannot re-write the statute, as is sought to be urged. For these reasons, no question of law arises on this aspect.