

No denial of sec. 35AD deduction just because there was delay in awarding star certificate to hotel

Summary – The Ahmedabad ITAT in a recent case of River View Hotels., (the Assessee) held that Once assessee, engaged in hotel business, was granted certification for categorization of its hotel as three star hotel, entire capital expenditure incurred by assessee in respect of its hotel was to be allowed for deduction under section 35AD

Facts

- The assessee-firm was engaged in the business of hotel. The year under scrutiny was the first year of commencement of its hotel business. During the year under scrutiny, it had achieved turnover of certain amount and had business loss of certain amount. The assessee had claimed deduction under section 35AD. The assessee had commenced its operation of business with effect from 17-11-2011. The assessee thereafter applied for categorization as three star hotel before the Ministry of Tourism under the aegis of Government of India on 7-6-2013. Such classification as a three star hotel, was awarded by a letter dated 24-9-2013 for the period of 11-9-2013 to 10-9-2018.
- The Assessing Officer rejected the claim of deduction as made by the assessee on the premise that the star certificate issued by the Tourism Department dated 24-9-2013 was beyond assessment year 2012-13.
- On appeal, the Commissioner (Appeals) allowed the deduction as prayed for by the assessee under section 35AD.

Held

- The assessee in order to avail the benefit of section 35AD has to fulfil the conditions being; (i) expenditure incurred prior to commencement of its operation and; (ii) the amount is capitalized in the books of account of the assessee on the date of its operation. There is no procedure to issue the star rating certificate from the date of application retrospectively and is issued on and from the date of signing of the certificate but it also does not mean that the hotel was operated for lower than three star category from the date of application till the issuance of three-star rated certificate. Naturally, in order to get the certificate, the assessee has designed the hotel rooms and all other amenities according to the terms and conditions specified for three star hotel.
- As per provisions of section 35AD, the expenditure incurred wholly and exclusively for the purpose of any specified business shall be allowed as deduction during the previous year in which he commences operations. Accordingly, the assessee-firm commenced its specified business during the previous year relevant to assessment year 2012-13 and thus it claimed entire capital expenditure as deduction under section 35AD in assessment year 2012-13.
- Clause (iv)(c) of sub-section (8) of section 35AD stipulates that 'building and operative anywhere in India a hotel of two-star or above category as classified by the Central Government'. There is no

such time limit of obtaining star certificate is prescribed in the above clause. The only requirement is to build an operation of two or more star hotel classified by Central Government. The Assessing Officer misconstrued the said clause and observed that 'in order to avail the benefit of a three star category hotel, the assessee was required to be classified as a three star category hotel in the year of operation as the benefit of this can only be given to a two and above star hotels. As the assessee does not fulfil the criteria, deduction claimed by the assessee is hereby withdraw'. The Commissioner (Appeals), on the other hand, allowed the appeal preferred by the assessee against the said order. As per the provisions of section, any capital expenditure incurred by the assessee prior to the commencement of operations of the new unit shall be allowed as deduction in the previous year in which the assessee commences the operation of offices as new specified business if the assessee had capitalized the amount of expenditure in its books of account on the date of commencement of operation of the specified business which is present in the case in hand. Furthermore, the assessee commenced its business on 17-11-2011 and he applied for the star classification certificate on 7-6-2013 which was granted by the concerned department on 24-9-2013 with effect from 11-9-2013 till 10-9-2018. In fact, the application was made by the assessee in due time, inspection was conducted by the concerned department and ultimately certificate was issued. There is no fault on the part of the assessee to apply and/or obtain the said certificate so far delay is concerned nor there any time limit specified for obtaining such certificate in this statute. The assessee thus fulfils the criterion prescribed under the statute and was entitled to deduction on capital expenditure incurred by him prior to the commencement of its operation and therefore there is no infirmity in the order passed by the Commissioner (Appeals) and thus the same is upheld. Revenue's appeal on this ground stands dismissed. Consequently, addition/disallowance made by the Assessing Officer is hereby deleted.