

Lessee entitled for Sec. 35AD deduction though lessor constructed basic civil structure of building: ITAT

FACT OF THE CASE

1. The assessee engaged was in the business of running hotels and resorts. It filed its return of income wherein it claimed deduction under section 35AD. The deduction was claimed on the ground that it had incurred expenditure towards the construction of a new Five Star Hotel.
2. During scrutiny assessment, the Assessing Officer (AO) disallowed the claim of deduction under section 35AD. AO contended that the assessee did not build the hotel building and operated the same on the leasehold land & building.
3. The CIT(A) upheld the order of AO. Aggrieved assessee filed the instant appeal before the Tribunal.

DECISION OF THE CASE

1. The Tribunal held that section 35AD does not specify that the assessee has to construct the entire building by itself or own the building and land. The provisions only specify that the specified business should be in the nature of the building and operating a new hotel of 2 stars or above category as classified by the Central Government.
2. In the assessee's case, there is no doubt that the entire investment made by the assessee was for constructing a portion of the building and for operating a new hotel of the category specified under the Act. Further, from the provisions of section 35AD, it was evident that these provisions are brought into the Act to promote certain specified businesses in the country.
3. These provisions grant deduction to the assessee regarding the entire capital expenditure incurred wholly and exclusively for the specified business that has commenced during the previous year. Even otherwise, by virtue of section 32, the assessee is entitled to deduction towards such expenditures under section 32 by way of depreciation over time. Therefore, there is no loss to the revenue when the whole issue is viewed in its entirety because when the assessee derives the benefit of section 35AD, it saves payment of tax in the initial years but in the subsequent years ends up paying higher tax as it is deprived of the benefit of depreciation under section 32.
4. Provisions of section 35AD only help the assessee to maintain higher cash liquidity during the initial years of its business. Once deduction under section 35AD is claimed, then by virtue of section 35AD(4), no other deduction in respect of these expenditures shall be allowed as deduction.
5. Thus, keeping in view of the facts and circumstances of the case, the assessee was entitled to the benefit of deduction under section 35AD.