



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

201

ITA-290-2005 (O&M)

Date of Decision: 05.12.2025

M/S MAJESTIC AUTO LTD.

...Appellant

Vs.

COMMISSIONER OF INCOME TAX & ANR

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL**

Present:- Mr. Viren Sharma, Advocate with
Mr. Yash Srivastava, Advocate
for the appellant

Mr. Vaibhav Gupta, Advocate
for respondent-Income Tax

JAGMOHAN BANSAL, J. (ORAL)

1. The appellant through instant petition under Section 260-A of Income Tax Act, 1961 (for short '1961 Act') is seeking setting aside of order dated 28.02.2005 passed by Income Tax Appellate Tribunal (for short 'Tribunal') to the extent deduction of expenses incurred on expansion outside the country and warranty claim have been disallowed.

2. The matter relates to Assessment Year 1997-98. The appellant is engaged in the business of automobile parts. With intent to expand its business outside the country, it incurred travelling and staff expenses outside the country during 1995-96 and 1996-97. The appellant attempted to set up a unit in China. The project could not be materialized and appellant had to stop its activities. In the process of finding out possibilities and attempt to set up a plant in China, the appellant incurred a sum of Rs.56,05,000/- on travelling

and staff salary. The appellant claimed deduction of aforesaid amount in the assessment year 1997-98 though expenses were incurred during assessment years 1995-96 and 1996-97. The Assessing Authority denied deduction of aforesaid expenses. The matter through Commissioner of Income Tax (Appeals) travelled to Tribunal which also rejected claim of the appellant.

3. The appellant claimed another deduction of Rs.11,31,773/- with respect to warranty claims. The appellant is engaged in the business of automobile parts where warranty expenses are always likely to incur. The Assessing Authority denied deduction of said amount. The Tribunal also upheld opinion of Assessing Authority.

4. Learned counsel for the appellant submits that as per Section 35D of 1961 Act, if a new unit is set up, assessee is entitled to deduction of pre-setting up expenses. The appellant could not materialize its new project. It could not be denied benefit of deduction on the ground that project actually did not come into picture. The respondent has allowed deduction of warranty claim in the subsequent years, thus, there is no occasion to deny claim for the assessment year 1997-98.

5. *Per contra*, learned counsel for respondent submits that appellant could claim deduction in the year in which expenses were incurred. Pre-incorporation expenses are revenue expenses and can be claimed in the year in which incurred. The appellant did not claim deduction during 1995-96 and 1996-97, thus, deduction was not permissible in 1997-98. With respect to deduction of warranty claim, he expressed his inability to controvert that deduction with respect to said expenses has been allowed in

the subsequent years.

6. We have heard learned counsel for the parties and perused the record with their able assistance.

7. As per Section 35D of 1961 Act, where an assessee being an Indian company incurs any expenditure after the commencement of his business, in connection with the expansion of his undertaking or in connection with setting up his new business, he is entitled to deduction of those expenses in 10 installments. Section 35D as applicable during the period in question reads as:-

“35D. (1) *Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2),—*

(i) *before the commencement of his business, or*

(ii) *after the commencement of his business, in connection with the extension of his industrial undertaking or in connection with his setting up a new industrial unit,*

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the industrial undertaking is completed or the new industrial unit commences production or operation.

(2) *The expenditure referred to in sub-section (1) shall be the expenditure specified in any one or more of the following clauses, namely :—*

(a) *expenditure in connection with—*

- (i) *preparation of feasibility report;*
- (ii) *preparation of project report;*
- (iii) *conducting market survey or any other survey necessary for the business of the assessee;*
- (iii) *engineering services relating to the business of the assessee :*

Provided *that the work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services referred to in this clause is carried out by the assessee himself or by a concern which is for the time being approved 75 in this behalf by the Board;*

(b) *legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;*

(c) *where the assessee is a company, also expenditure—*

(i) *by way of legal charges for drafting the Memorandum and Articles of Association of the company;*

(ii) *on printing of the Memorandum and Articles of Association;*

(iii) *by way of fees for registering the company under the provisions of the Companies Act, 1956 (1 of 1956);*

(iv) *in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus;*

(d) *such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed.”*

[Emphasis supplied]

8. From the perusal of above quoted section, it is evident that an assessee is entitled to deduction of expenditure incurred after the commencement of his business in connection with expansion of his undertaking or setting up of a new unit. The expenditure should be one or

more of the nature as notified in Sub Section (2). The appellant concededly incurred expenses with respected to feasibility of project. The expenses were incurred by way of travelling and staff salary. Those expenses directly related to expansion of undertaking as well as setting up of a new unit. Besides Section 35D, Section 37 provides that any expenditure, not in the nature of capital expenditure or personal, laid out or expended wholly or exclusively for the purpose of business shall be allowed in computing the income chargeable under the head “Profit and gains of business”. The Revenue is not claiming that expenses claimed by appellant were not incurred in connection with business of the appellant. The appellant concededly incurred expenses on travelling and staff salary with respect to expansion of its existing business. The collective reading of Section 35D and 37 makes it clear that appellant was entitled to deduction of aforesaid expenses. As per Section 35D, the expenses could be claimed as deduction in 10 years whereas appellant claimed in 1 year because new project did not commence. The expenses were not exorbitant, project could not commence and a period of 3 decades has passed away, thus, keeping in mind mandate of Sections 35D & 37, we deem it appropriate to hold that appellant rightly claimed deduction of aforesaid expenses.

9. The revenue is not disputing the fact that deduction of warranty claim has been allowed in subsequent years. There seems no reason to deny deduction for the year in question.

10. In the wake of above discussion and findings, we are of the considered opinion that the instant appeal deserves to be allowed and accordingly allowed. Impugned order is set aside to the extent of denial of

deduction of afore-stated expenses.

11. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

December 05, 2025
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No