

## **SHORT NOTE ON ADDITIONAL DEPRECIATION UNDER SEC 32(1)(iia) OF THE INCOME TAX ACT**

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Depreciation refers to the process where the asset value reduces due to wear and tear. In tax this depreciation is used to reduce the net taxable income so as to reduce total tax payable.

### **Additional Depreciation -**

Additional depreciation is an additional depreciation benefit (usually 20% if assets are used more than 180 days, 10% if less than 180 days) given to taxpayers who acquire machinery or plant so as to incentivize them to invest in capital assets. Section 32(1)(iia) provides for additional depreciation and reads as under:

*“S.32(1) (iia) in the case of **any new machinery or plant** (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, **by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power**<sup>1</sup>, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii) :*

*Provided that where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, the provisions of clause (iia) shall have effect, as if for the words "twenty per cent", the words "thirty-five per cent" had been substituted :*

*Provided further that **no** deduction shall be allowed in respect of—*

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<sup>1</sup> Inserted by Finance Act 2012 w.e.f.1-4-2013. Words “or in the business of generation, transmission and distribution” shall be substituted for “or in the business of generation or generation or distribution” by Finance Act 2016 w.e.f 1-4-2017

(A) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or

(C) any office appliances or road transport vehicles; or

(D) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;"

Thus, broadly speaking, under Sec 32(1)(ia) additional depreciation is allowed where new machinery or plant has been purchased by the assessee who is engaged in the business of manufacture of any article or thing.

**Issue: Whether machinery or plant acquired to generate power (electricity) will be eligible for additional depreciation?**

At the outset, the Finance Act 2012 amended Sec 32(1)(ia) of the Act w.e.f 1-4-2013 by inserting "or in the business of generation, transmission or distribution of power". This specifically allowed additional depreciation on such machinery or plant acquired for the generation of power. So it is definitely allowable post Finance Act 2012 amendment.

**The question thus is whether pre-2012 Finance Act amendment additional depreciation could be claimed on such machinery or plant newly acquired to generate power (electricity).** The judiciary has, as we discuss below, affirmed that, indeed, additional depreciation can be claimed on such plants and machinery to generate power even pre-Amendment.

There are two points, with corresponding judicial decisions, to buttress this view:

1. It is to be noted that section 32(1)(ia) does NOT specify that the plant or machinery must be *directly used* for manufacture nor that the manufacture must be directly done using these machinery or plant. The section only stipulates that the assessee has to be a manufacturer and machinery or plant has been acquired by the assessee. Thus, even pre-amendment as long as the machinery or plant to generate power/electricity were acquired by assessee and the assessee was engaged in some manufacturing, whether or

not that manufacturing was linked to generation of power, additional depreciation could be claimed for aforesaid assets. The **judgement in this regard** is that of the Hon'ble Madras High Court in the case of **CIT vs. VTM Ltd**<sup>2</sup>. In para 5 of the Judgement it holds that *“As far as application of Section 32(1)(ia) of the Act, is concerned, what is required to be satisfied in order to claim the additional depreciation is that the setting up of a new machinery or plant should have been acquired and installed after 31st March 2002 by an assessee, who was already engaged in the business of manufacture or production of any article or thing. **The said provision does not state that the setting up of a new machinery or plant, which was acquired and installed upto 31.03.2002 should have any operational connectivity to the article or thing that was already being manufactured by the assessee. Therefore, the contention that the setting up of a wind mill has nothing to do with the power industry, namely, manufacture of oil seeds etc. is totally not germane to the specific provision contained in Section 32(1)(ia) of the Act.**”*

Various Judgements have also held the same view<sup>3</sup>.

2. **Notwithstanding the above, in any event, the production of electricity is considered manufacture of an article or thing.** In **NTPC vs DCIT**<sup>4</sup>, the Hon'ble Delhi High court on the issue of whether produce of electricity can be considered as manufacturing stated that electricity is capable of abstraction, transmission, transfer, delivery, possession, consumption and use like any other movable property. Thus it is a logical conclusion that prima facie as per S.32(1)(ia) even as it stood pre-amendment additional depreciation cannot be denied on grounds that production of electricity is not an article or thing.

This view was confirmed in the Chennai ITAT decision in **M. Satishkumar Coimbatore v. Department of Income Tax**<sup>5</sup> wherein in para 10 of the Judgement it is stated that *“In view of the above, we are of the considered opinion that generation of electricity is a manufacturing activity. The assessee is involved in the manufacturing activity and fulfills the conditions as laid down under section 32(1)(ia). The Government vide Finance Act, 2012 has amended the provisions of section 32(1)(ia) to include*

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<sup>2</sup> 316 ITR 336 (Mad)

<sup>3</sup> CIT v. Hi Tech Arai Ltd 321 ITR 477 ; NTPC Ltd v. DCIT ; CIT v. Texmo Precision Castings (2010) 321 ITR 481 (Mad) ; DCIT v. Bengal Beverages (P.) Ltd. [2017] 87 taxmann.com 103 (Kolkata – Trib)

<sup>4</sup> ITA 1290 (2018)

<sup>5</sup> 2012 ITA NO.718/Mds/2012

*the business of generation or generation and distribution of power, eligible for benefit under section 32(1)(ia). Although the said amendment is with effect from 1.4.2013 but it gives impetus to the view that generation of electricity is a manufacturing process and qualifies for the benefits under section 32(1)(ia)". Thus in other words the Finance Act 2012 amendment merely gives legislative effect to an interpretation already taken by the Judiciary.*

**CONCLUSION:**

Thus, additional depreciation u/S.32(1)(ia) can be claimed on machinery or plant acquired for the production of power (electricity) even pre-Finance Act 2012 amendment.