

_ April 2020

To,
XXXX
XXXX
XXXX,
Mumbai

Dear Sir,

Re: XXXXXXXXXXXX. ('XXX' or 'Assessee')
PAN – XXXXX
Assessment Year ('AY') XXXXX

Sub: XXXXXXXXX

Background/ Facts of the case

1. XXXX is engaged in the business of XXXXXX.
2. The Return of Income of the A.Y. XXXX was filed by the Assessee firm on XXXXX declaring total income of Rs.XXXX/-.
3. In the year XXXX7 the Appellant Firm began XXXXX (which is eligible for deduction under section XXX of the Income Tax Act, 1961) But the Appellant exercised the option to claim deduction under section XXX of the Act first in the XXXX, as per section, Assessee had option to claim deduction for any 10 consecutive years out of block of 15 years . This would be the year from which the Appellant is governed by XXXX of the Act. Prior to that, the provisions of the section had no applicability in the computation of total income under XXXX of the Act.
4. This is the 2nd year (XXX) of claim of deduction under section XX of the Act and Assessee has claimed deduction of RsXXXXXX/-.

Ground No. 1 to 4: – XXXXX

5. The department is in appeal before your goodself against the order of CIT(A), and there is only one effective ground XXXXX,

Amendment to XXXX by Finance Act 1999

6. The Finance Act, 1999, w.e.f. 1-4-2000 substituted the erstwhile section section XXXXX **undertakings which have the option to XXXXXXXXXXXX** when claim of deduction is made.
7. In this regard, we would like to submit that in computing deduction under section XXXXX, the unabsorbed depreciation and losses pertaining to years earlier to the initial assessment year which XXXXXXXX.
8. In this context, it is pertinent to note provisions of section XXX of the Act which reads as under:

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“XXXXXXXXXXXXXXXXXXXXX”

9. The term “XXXX” is not defined in the new section XXX of the Act. However, the said term was defined in XXXXX which was on the statute prior to 1st April, 2000 which is reproduced hereinbelow:

“XXXXXXXXXXXXXXXXXXXXX”

10. Thus, the aforesaid definition clearly indicates that XXXXXXXX.
11. Further, the provisions of section XXXXXXXX of the Act state that the deduction specified in subsection (1) may at the option of the assessee XXXXXXXXXX.

Contents of Form XXXXXXXX:-

12. In addition to above, A reference to the form prescribed may at times throw more light. In the present case also, the contents and language of XXXXXXXX are relevant. Relevant extracts from XXXXXXXX, under the XXXX are reproduced below:

▶ XXXXX

13. From the above clause it is clear that the term XXXX under the present Section XXXXX..

Covered by various High Court/Tribunal decisions:

14. Further, Assessee submits that the following judicial precedents have held that XXXXXXXXXX:

▶ XXXXX
▶ XXXXX
▶ XXXXX

15. Further, we wishes to place reliance on the decision of the Karnataka High Court in the case of XXXX wherein the high court has observed as under:

➤ XXXX
➤ XXXXX
➤ XXXXX

16. In light of the above decision, we submit that the aforesaid decision is applicable to the case of XXXX and hence deduction under section XXXX should not be denied to the Assessee.

Covered by Tribunal decision in Assessee’s own case for XXXX:

17. Further, the issue of deduction under section XXX of the act is squarely covered in Assessee's own case for XXXXXXXXXX(Refer page 98 - 101 of legal paperbook) wherein the Tribunal has held as under:

“XXXXXXXXXXXXXXXXXXXXX”

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18. In light of the above decision, we submit that the issue is covered by decision in XXXX own case for XXX and facts being identical we request your Goodself to allow deduction XXXXX and dismiss the appeal of the department.

Non-applicability of Special Bench decision in case of XXXXX

19. The AO has relied on the decision of Special Bench in case of XXXXX in this regard we would further like to submit that, the issue whether XXXXX is not applicable in the present case as the facts are different. Further the decision of Special bench was rendered in the context of XXXXX and hence, the same is not applicable in the facts of the present case.
20. In addition to the above, the Ahmedabad ITAT in case of XXXXX, after considering the decision of XXXX, have observed that once XXXXX.
21. Further, we would like to rely on the decisions mentioned in para 21 above, wherein various High Courts/Tribunals have allowed appeal in favour of the Assessee, after considering decision of Special Bench in case of XXXX.

CBDT Circular accepting Assessee's position on XXXX:

22. Further, recently the CBDT clarified the term XXX in section XXXX of the Act vide its Circular No.XXXX, wherein it was clarified as under:

"XXXXXXXXXXXXXX"

23. In light of the above circular, we submit that the once department accepted the position of XXXXXXXXXXXX given to Department's counsel to withdraw the appeal on such issue, the present appeal would not have any leg to service and hence the same should be dismissed.
24. Further, we would like to place reliance on following judicial precedents where in the CBDT circular was followed by the Tribunal and deduction XXXXXXXXXXXX.

- ▶ XXXXX
- ▶ XXXXX
- ▶ XXXXX

Accordingly, deduction XXXXX should not be denied to the Assessee.

Non Jurisdictional High Court orders to be followed over Tribunal orders

25. We submits that in view of the decision of Madras High Court in case of XXXXX and other rulings of various High Courts mentioned above relied upon by Assessee, non favourable Tribunal orders would not apply since non jurisdictional High Court orders are to be followed over Tribunal orders. In this connection, XXXX places reliance on the following judicial precedents:

- ▶ XXX
- ▶ XXXX

If two view is possible on interpretation of legal provisions, the view which is in favor of Tax payer should be followed

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26. The principle that where there are two or more interpretations possible, the one which is beneficial to the assessee would be preferred has been upheld in various judicial pronouncements including the following:

▶ XXXXXXX

27. The aforesaid principle has been upheld by following judicial pronouncement:

▶ XXXX

▶ XXXX

Prayer

28. In light of the above discussions, XXXX submits that the XXXXXX.

In case you require any further clarifications, please let us know.

Yours faithfully,

For XXXXXX

Authorized Signatory