

# TAX FLASH NEWS

17 April 2020

## Employee linked deduction is available to the employer even if the 'specified days' condition is fulfilled by employees during subsequent years

Recently, the Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Texas Instruments (India) Private Limited<sup>1</sup> (the taxpayer) dealt with an issue that whether employer will be eligible to claim benefit under Section 80JJAA<sup>2</sup> of the Income-tax Act, 1961 (the Act) (employee linked deduction) in next two years of employment in case employees have not fulfilled 'specified days'<sup>3</sup> condition during the first year of employment. The Tribunal held that in the first year of employment, if the employee linked deduction is not given due to non-fulfillment of 'specified days' condition, such deduction should be allowed in next two years if such employees work for more than specified days during those years. The Tribunal while dealing with an amendment<sup>4</sup> introduced by the Finance Act, 2018 in Section 80JJAA of the Act observed that such amendment is curative or clarificatory in nature and hence the claim for deduction prior to the period of amendment should be allowed.

### Facts of the case

During the Assessment Year (AY) 2008-09, the taxpayer claimed employee linked deduction with respect to the employment of new workmen. The Assessing Officer (AO) held that these employees did not work for more than 300 days in AY 2007-08, therefore wages paid to these employees in AY 2008-09 will also not qualify for employee linked deduction. The AO observed that if the condition for grant of employee linked deduction was not satisfied with

reference to additional wages paid to new employees in the first year of their employment, then the additional wages paid to such new employees will not be allowed in the second and third AYs also. The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO. Aggrieved, the taxpayer filed an appeal before the Tribunal.

The taxpayer, relying on the decision of Bosch Ltd<sup>5</sup>, contended before the Tribunal that if in the first year of employment the additional wages paid were not allowed as deduction for the reason that the workmen did not work for 300 days or more then in next two assessment years, if employees work for more than 300 days each, the deduction should be allowed. The taxpayer relied on the amendment introduced by the Finance Act 2018 which defines the term 'additional employee'. The taxpayer contended that though the aforesaid amendment was applicable from 1 April 2019, it was intended to remove hardship in getting benefit of an incentive provision. Therefore, it should be treated as curative in nature and applied retrospectively based on the principle laid down by the Supreme Court in the case of Calcutta Export Company<sup>6</sup>.

### Tribunal's decision

The Tribunal observed that in the first year of employment the additional wages paid were not allowed as deduction for the reason that the workmen did not work for 300 days or more. However, if such workmen have worked for more than 300 days during each of the next two assessment years, the employee linked deduction should be allowed.

<sup>1</sup> Texas Instruments (India) Private Limited v. ACIT (IT(TP)A No.169/Bang/2014) – Taxsutra.com 2 Rule 31A of the Income-tax Rules, 1962

<sup>2</sup> Under Section 80JJAA the employer is eligible to claim additional deduction on the emoluments paid to new employees over a period of three years subject to fulfilment of certain conditions. The deduction was available where the new workers were employed for more than specified days during the year.

<sup>3</sup> 300 days for relevant assessment year

<sup>4</sup> The amendment is made effective from 1 April 2019 i.e. AY 2019-20

<sup>5</sup> Bosch Ltd v. ACIT [2016] 74 Taxmann.com 161 (Bang)

<sup>6</sup> CIT v. Calcutta Export Company [2018] 93 taxmann.com 51(SC)

The Tribunal observed that this aspect has been clarified<sup>7</sup> by the Finance Act, 2018 and even prior to such curative or clarificatory amendment, the claim employee linked deduction cannot be disallowed on such ground. Accordingly, the deduction claimed by the taxpayer should be allowed.

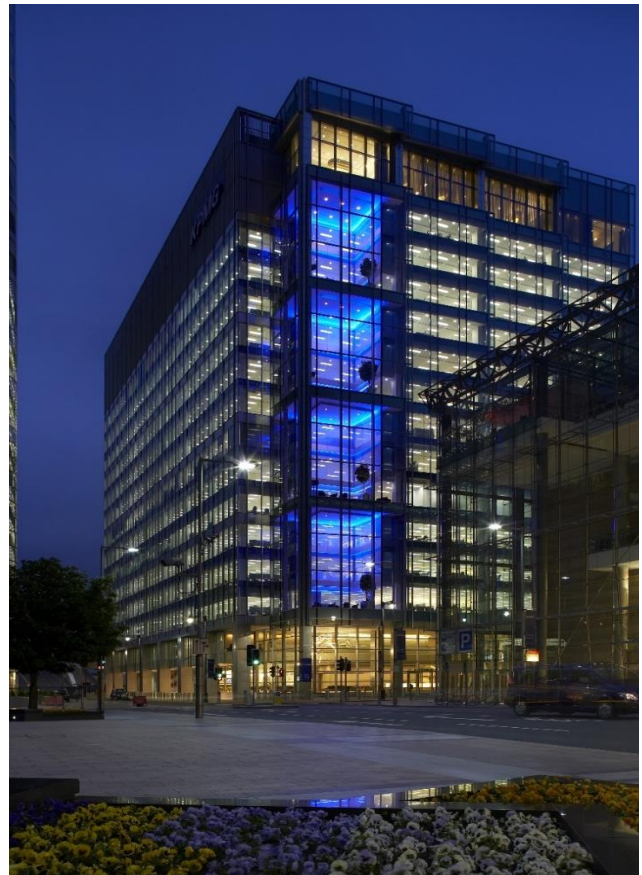
### Our comments

The issue with respect to the claim of deduction under Section 80JJAA of the Act vis-à-vis the eligibility condition for claiming such deduction getting fulfilled in subsequent years has been a subject matter of debate before the Courts/Tribunal.

In some of the cases taxpayers have argued that the deduction should be available in the subsequent years if the threshold limit of specified days has been complied with in such subsequent years. However, in such cases, the Tribunal<sup>8</sup> while denying the deduction held that the law expressly provided that the threshold limit of specified days is to be completed in the first year of employment itself.

The condition of completing specified number of days in the first year of employment was relaxed by the Finance Act, 2018. It provides that the deduction would be available to the employer in the second year, if the employee completes the target of specified days<sup>9</sup> in the second year.

In the present case, the Tribunal dealt with a similar issue for AY 2008-09 and observed that the aforesaid amendment is curative in nature and it has been introduced to remove the hardship. Therefore, it should be applied retrospectively.



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<sup>7</sup> By adding a second proviso to the definition of additional employee in Explanation (ii) to Section 80JJAA of the Act

<sup>8</sup> LG Electronic India Pvt Ltd. v. ACIT [2013] 59 SOT 96 (Del), Texas Instruments (India) P. Ltd. (I.T.(T.P) A. No.1478/Bang/2010

<sup>9</sup> 240 /150 days (as the case may be)

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