

## Tax Hotline

May 15, 2003

### "SOFTWARE DEVELOPMENT EXPENDITURE" CONSIDERED AS "R & D"

The Income Tax Appellate Tribunal, New Delhi ("ITAT") has recently held in the case of TCIL Bellsouth v Deputy Commissioner of Income Tax, New Delhi that software developers can claim a deduction under section 35 of the Income Tax Act, 1961 ("ITA") in respect of the software development expenditure incurred by them.

Section 35 of the ITA provides for a deduction in respect of expenditure incurred on scientific research, irrespective of whether the same is a capital expense or a revenue expense. However, software development was not considered as scientific research and hence no deduction was being available in respect of the same under section 35 of the ITA.

In the instant case, the counsel for TCIL Bellsouth (the Appellant) argued that a considerable time is usually spent in research while developing software. Also such research is original and planned investigation is undertaken with the hope of gaining new scientific or technical knowledge. Further, research and development expenses have to be viewed in the context of the dynamic and vibrant technology involved in the IT industry, irrespective of the fact that the benefits of software development would accrue to the company over the life of the product. At times there were cases that all development did not result in marketable products.

In view of the above arguments the Delhi ITAT held that software development would also fall within the ambit of section 35 of the ITA, thus entitled for 100% deduction.

Source: *The Economic Times*, May 14, 2003

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