

Expenditure on upgradation of an existing machine is a revenue exp.

Summary – The Chennai bench of the ITAT has recently pronounced a decision in the case of Lasik Centre (India) (P.) Ltd., (the Assessee) and held that where upgradation kit could not function independently, but only improved treatment performed by the basic machine, in the absence of any separate machine being brought into existence, the amount incurred was allowable as revenue expenditure.

Facts

- The assessee incurred expenditure on purchase and installation of laser upgradation kit and treated it as revenue expenditure. However, the Assessing Officer treated it as capital expenditure. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer. On further appeal, the Tribunal remitted the issue back to the Assessing Officer to verify whether the expenditure incurred was capital or revenue in nature.
- The Assessing Officer observed that in the set aside proceedings, the Tribunal had not given any direction to consider whether the expenditure could be allowed as business expenditure under section 37. Therefore, holding that the expenditure could not be classified as current repairs under section 31, in absence of replacement of any existing spare parts, he disallowed expenditure, holding it as capital in nature.
- On appeal, the Commissioner (Appeals) allowed the expenditure as revenue under section 37 as the upgradation kit helped in precise surgical treatment and the upgrade could not function independently but only improved the treatment performed by the basic machine. Since no separate machine was brought into existence, the assessee's appeal was allowed.

Held

- In the instant case, the assessee purchased zyoptic retrofit kit and other items for upgradation of its original lasik machine which helped in doing precision eye surgery. This was necessitated because of technological development in zyoptic machine and required certain parts to be upgraded and added to the original lasik machines for better surgical procedures. The assessee claimed the entire expenditure as revenue expenditure.
- The finding of the Assessing Officer that the Tribunal had only given a limited scope to consider whether the expenditure was current repairs under section 31 was not correct. It is not in dispute that the Tribunal had remanded the matter back to the Assessing Officer to adjudicate whether

expenditure in question was capital or revenue in nature. Therefore, the Commissioner (Appeals) has rightly adjudicated the issue of allowability of the expenditure under section 37(1).

- The Ahmedabad Bench of Tribunal, in the case of *Martix Telecom (P.) Ltd. v. Asstt. CIT* [2011] 10 (Trib.) 258 held that upgradation or improvement of an existing product, through which all in all a new product was not made, could not be said to be an expenditure towards acquiring of a new asset, therefore, it remains out of ambit of definition of 'capital expenditure'.
- In the instant case also, the expenditure incurred, by the assessee; by purchasing of upgradation kit was to carry out precision eye surgery by using advanced technology, which was the need of the time in the line of the business of the assessee. Therefore, it was an expenditure in revenue field and hence, an allowable deduction to the assessee.
- Therefore, the order of the Commissioner (Appeals) is confirmed and the grounds of appeal of the revenue are dismissed.