

Business deemed to have commenced even on commencement of one of the activities constituting the business

Summary – The Bangalore ITAT in a recent case of UE Development India (P.) Ltd., (the Assessee) held that in order to determine as to whether assessee has commenced its business for purpose of allowing certain expenditure under head 'Business expenditure', it is not necessary that all activities which go to make up business should have been started rather it is sufficient even if one among many activities which constitute business is commenced which is first in point of time and which must necessarily precede all others.

Facts

- The assessee was engaged in the business of engineering and construction work in India. It entered into a contract with NHAI for improving and furlaning a part of national highway. For said purpose, two contracts, *i.e.*, engineering, procurement, construction contract (EPC contract) and operational and management contract (O&M) were entered into simultaneously.
- According to assessee, having secured the aforesaid contracts and having recruited the employees on 15-1-2002, it had commenced business from the said date. Accordingly, the assessee filed its return of income for the assessment year 2002-03 by disallowing certain expenditure incurred from the date of incorporation till the date of commencement, *i.e.*, from 19-9-2001 to 15-1-2002 considering it as preoperative expenditure and declared a total loss of Rs. 2.47 crore.
- The Assessing Officer, however, completed the assessment at *nil* income by disallowing entire expenditure of Rs. 2.47 crore as pre-commencement expenditure.
- The Commissioner (Appeals) upheld said disallowance.
- On second appeal.

Held

- The ITAT observed that the assessee was incorporated on 19-9-2001, entered into contracts on 10-1-2002 for undertaking construction and even employed its first employee on 15-1-2002. Thus, under normal circumstances it is evident that it was ready for commencement of its business.
- There is a clear distinction between the commencement and the setting up of a business. A business can be said to be set up when it is established and is ready to start business. A 'business' connotes a continuous course or series of activities.
- For the business to have commenced, it is not necessary that all the activities which go to make up the business should have been started rather it is sufficient if one among the activities which constitute the business is commenced which is first in point of time and which must necessarily precede all the others.

- The words 'ready to commence' would not necessarily mean that all the integrated activities are fully carried out and/or wholly completed. The requirement is also complied with in a given case where an assessee had undertaken the first of the kind of integrated activities which the business is overall comprised of.
- It is not necessary that all the categories of its business activities must start either simultaneously or that the last stage must start before it can be said that the business was set up. What is material is the date when the company went into or started one or the other of its component activities.
- In the instant case, the various expenses accounted for are in the nature of interest, commission and banking charges, management fees, soil investigation charges, quarry lease fee and survey expenses. The above said expenses whether it arose from EPC contract or from O&M contract, are not clear.
- The assessee had produced only the O&M contract before the Income-tax authorities. From the O&M contract, it can be seen that the work has commenced only from May, 2002, *i.e.*, beyond the close of the accounting year. Though it was asserted by the assessee that the EPC contract was preceding the O&M contract, there was nothing on record to suggest the same.
- Accordingly, the ITAT directed that the assessee should produce the agreement for the EPC contract and discuss the facts afresh with clarity with the revenue authorities and restored the matter to the file of the Assessing Officer for *de novo* consideration.
- In the result, the appeal filed by the assessee is allowed for statistical purposes.