

Treating an exp. as capital when earlier it was held as revenue on similar facts would be sheer 'change of opinion'

Summary – The Delhi High Court in a recent case of Microsoft Corpn. (I) (P.) Ltd., (the Assessee) held that Assessing Officer having allowed expenses as revenue expenses, on basis of same details to take view that expenses were capital in nature, would clearly amount to a change of opinion. Issue as regards provision for gratuity having been specifically examined by Assessing Officer in original assessment, reopening amounted to a mere change in opinion. Where excess depreciation was allowed to assessee due to computational error on part of Assessing Officer, assessment could not be reopened.

Facts

- Assessment of assessee was sought to be re-opened by the Assessing Officer on following grounds:
 - Deduction under section 37(1) was wrongly allowed to assessee in respect of campaigning expenditure for launch of a product, software related expenditure and expenditure on consultancy for development of marketing strategy. These expenditures gave an enduring benefit to assessee and, thus, they had to be capitalized.
 - A deduction towards provision for payment of gratuity had been allowed. But Form No. 3CD submitted by assessee depicted it as an inadmissible expenditure and, thus, it had to be added back to income of the assessee.
 - Excess depreciation was allowed to assessee which resulted in underassessment of income of assessee.
 - The assessee submitted that said issues were duly considered by Assessing Officer in original assessment and, thus, it was a case of mere change of opinion. Further, no failure to disclose full and true facts was attributed to assessee.

Held

Issues as regards revenue expenditure

- It is apparent that insofar as campaign expenditure is concerned, as per the recorded reasons, this expenditure was required to be capitalized and, therefore, ought to have been added back to the income of the assessee. Consequently, according to the recorded reasons, the omission resulted in allowance of inadmissible expenditure involving short levy of income-tax under section 234B.
- In details of advertising expenses exceeding Rs. 1 lakh incurred during the assessment year 2005-06, one of the items mentioned there was campaign expenditure for launch of new products which is the very same item mentioned in the recorded reasons. At this juncture, one can also refer to the

expenses for consultancy for the development of marketing strategy which were also given as details for advertising expenses.

- The HC observed that the details pertaining to the recorded reason had been sought by the Assessing Officer and had been provided by petitioner/assessee in the course of the original assessment proceedings.
- The only issue pertaining to these items is that they should not have been treated as revenue expenditure but, ought to have been treated as capital expenditure and, therefore, the said expenditure ought to have been added back to the income of the assessee.
- The issue of whether expenditure is of a revenue or capital nature almost always lends itself to debate. Therefore, the details having been sought in the original assessment proceeding and having been supplied by the assessee and the Assessing Officer having allowed the expenses as revenue expenses on basis of said details to take the view that the expenses were capital in nature, would clearly amount to change of opinion.
- Insofar as the disclosure part is concerned, it is evident that the concept of full and true disclosure applies not only to the stage of filing of the return but to the entire process of assessment under section 143(3).
- Therefore, if there is a full and true disclosure in the course of the assessment proceedings, that will have to be regarded as a disclosure for the purpose of the proviso to section 147. Therefore, there was no failure to disclose full and true material facts necessary for the assessment.
- Moreover, it is also a case of a mere change in opinion.
- Hence HC allowed the writ petition in favour of the assessee.