

HC - Expenditure incurred on setting-up V-Sat facility is revenue expenditure

Summary – The High Court of Karnataka in a recent case of Kirloskar Computer Services Ltd., (the Assessee) held that where assessee-company using facilities of telephonic connectivity for transfer of data, set up a V-sat facility to improve said services, annual license fee paid by it in form of bandwidth charges was to be allowed as revenue expenditure.

Facts

- The assessee company carrying on its business was using facilities of telephonic connectivity for transfer of data in and out of the office.
- To improve said particular facility, it wanted to set up a V-SAT facility and, thus, paid site charges which were in the nature of licence fee for bandwidth charges.
- The assessee claimed deduction of the said amount as revenue expenditure. It also claimed deduction for payment of interest on the loan borrowed for setting up of the said facility.
- The Assessing Officer rejected assessee's claim holding that the aforesaid amount was in the nature of capital expenditure. He also held that since the interest was paid on the loan for setting up of the said facility, the assessee was not entitled to deduction of interest as well.
- The Commissioner (Appeals) upheld the order of the Assessing Officer.
- The Tribunal, however, allowed assessee's claim holding the expenditure in question to be revenue in nature.
- On revenue's appeal:

Held

- It was noted from record that before commencing the V-SAT operation, the assessee was transferring the data through telephone line at the speed of 32 KBPS. Any advancement in this line can go up to 128 KBPS, but through cable network, which is humanly impossible to connect in all the 18 cities.
- Subsequently the data transfer became very slow in the operational line. At that juncture, the assessee thought of increasing the capacity by way of V-SAT application through satellite network wherein the data can be transferred at much higher speed and the subscriber can contact any of the customers on a local call basis. Thereafter they have incurred the expenditure in setting up the V-SAT application facility.
- The Assessing Authority proceeds on the assumption that the assessee has set up a new project for the first time in which, the assessee did not have any prior experience. They have entered into an agreement with HFCL Satellite Communications Limited, a service provider in the area of V-SAT communications and they have incurred the aforesaid expenditure. Therefore, it is a new project

and not a part of the existing project or a business carried on by the company with advanced technology.

- The Assessing Officer further opined that the amount spent resulted in advantage of enduring benefit and therefore, the said expenditure is in the nature of a capital expenditure.
- In the case of *Scales v. George Thompson & Co. Ltd.* (1927) 13 T.C. 83, 89 (K.B.), dealing with the test for determining whether the two constitute the same business or different businesses, it is held what the Court has to look is, was there any inter connection, any inter lacing, any inter-dependence, any unity at all embracing those two businesses? That inter-connection, inter-lacing, inter-dependence and unity are furnished in a case by the existence of common management, common business organization, common administration, common fund and a common place of business, then the irretrievable inference that is to be drawn is that it is the same business and then the amount spent would be in the nature of revenue expenditure and not capital expenditure.
- In the instant case, the assessee is the same. Assessee is the person who borrowed money for setting up the V-SAT application and incurred the entire expenditure. After setting up the new facility or the new project, the assessee continues to manage the said project as a part and parcel of the existing project.
- The very letter on which the Assessing Authority relies on clearly demonstrates that the assessee was using telephone line for data transfer. Subsequently, the assessee was using cable network, but still it was slow in the operation. In order to increase the said capacity, V-SAT application through satellite was adopted. The result was that the data can be transferred at much higher speed. It is in the context of switch over to the new technology and adopting this new technology, the aforesaid expenditure was incurred and therefore, the said expenditure incurred is revenue expenditure.
- The Tribunal was therefore justified in allowing the said expenditure, as it squarely falls under section 37.
- For the aforesaid reasons, there is no merit in this appeal. Hence, the appeal is dismissed.