

## **Expenditure incurred to remove hardship in professional work allowed as revenue expenditure**

**Summary – The Mumbai ITAT in a recent case of Javed Akhtar, (the Assessee) held that where assessee had incurred expenditure on replacement of new lift to remove hardship and inconvenience to his professional work as well as family life due to frequent breakdown of old lift, 50 per cent of total expenditure which was for professional purpose would be allowed as revenue expenditure.**

### **Facts**

- The assessee, a lyricist, operated his profession from two premises occupied by him in a building for professional and residential purposes. As assessee was facing inconvenience and hardship in his professional front as well as residential and private life due to frequent break down of old lift in the said building, he offered for replacement of old lift with new one with condition that lift would belong to society and be used by all members.
- Assessee claimed that expenditure being incurred for smooth functioning of assessee's profession, it was an allowable expenditure under section 37(1).
- The Assessing Officer did not accept the claim of the assessee and held that the lift was installed at the co-operative housing society and an essential part of the building to be treated as a capital asset, and, therefore, it could not be considered as revenue expenditure. The Assessing Officer further held that it could not also be treated as capital expenditure because the assessee was not the final owner of the asset on which the depreciation was claimed.
- On appeal, the Commissioner (Appeals) was of the view that the lift installed was definitely not a revenue expenditure but was a capital asset and, since the installation of new lift was both for the purpose of assessee and his family's personal use and use by his professional visitors, Commissioner (Appeals) allowed 50 per cent of expenditure claimed by the assessee to be capitalized and depreciation at prescribed rate.
- On second appeal:

### **Held**

- The building in question is consisting of 7 floors and 14 flats out of which the assessee owns two flats. From one flat the assessee is doing his professional work and the other flat is used for residential purposes. It is apparent from the facts that the assessee has incurred the expenses for replacement of the lift due to compelling circumstances as the assessee was facing inconvenience and hardship in his professional front as well as residential and private life due to frequent break down of the old lift in the said building. Thus, it is clear that the advantage and facility of the new lift is not restricted exclusively for the professional activity of the assessee but is also enjoyed by assessee as well as family members of the assessee other than the professional purpose. Though the lift is also being used by other residents of the buildings, however for the purpose of considering the

allowability of expenditure the use of lift by other residents in the building is not so material or relevant. The assessee has incurred the expenditure keeping in view its professional and family requirements.

- For allowing the expenditure under section 37, the mandatory condition is that the expenditure has to be laid out wholly and exclusively for the purpose of business or profession of the assessee however it should not be on the capital field. So far as the nature of the capital in question is concerned since the assessee does not acquire any advantage in the capital account or any new asset for its professional purpose and the lift in question is not an apparatus of generating the professional income, it cannot be considered as an expenditure of capital nature as it does not create any new asset belonging to the assessee. The CIT(A) having considered this fact that the assessee is having residence as well as office in the same premises and the lift is installed for the purpose and interest of his profession as well as non-professional and family members personal convenience, therefore, the whole expenditure is not found to be incurred exclusive for the purpose of profession of the assessee.
- Expenditure had been incurred in the compelling circumstances to remove the inconvenience and hardship faced by the assessee in its professional work as well as non-professional life and the advantage of the said expenditure was to facilitate the assessee's professional activity to be carried out more efficiently and profitably, 50% of the total expenditure which was considered to be for the professional purpose was allowed as revenue expenditure. Accordingly the impugned order of Commissioner (Appeals) is modified to that extent.