

## **Exp. incurred by 'Idea Cellular' on abandoned projects intending to facilitate its business was revenue exp.**

**Summary – The Mumbai ITAT in a recent case of Idea Cellular Ltd., (the Assessee) held that where project on which expenditure was incurred could not be completed, but it was intended to facilitate assessee's business activity to be carried out more conveniently and profitably, such expenditure was to be allowed as revenue expenditure.**

### **Facts**

- During the course of assessment proceedings, the Assessing Officer noted that the assessee-company had incurred expenses on abandoned project.
- On query from the Assessing Officer, the assessee submitted that it had incurred expenses for putting up cellular sites/towers for enabling its business but this could not be completed due to projects were abandoned. Accordingly, the assessee claimed that the expenses were incurred for the purpose of its business and, therefore, same was to be allowed as business expenditure.
- However, the Assessing Officer disallowed the claim of the assessee on the ground that expenditure had been spent by the assessee on sites to bring into existence the new asset and new source of income. Accordingly, the Assessing Officer held that the loss incurred due to abandonment of project, was capital in nature and deduction was disallowed.
- On appeal, the Commissioner (Appeals) was concurred with the view of the Assessing Officer and held that the expenses incurred on all sites were definitely capital expenses, when such a project is abandoned, the entire expenditure incurred is a capital loss.
- On appeal:

### **Held**

- There is no dispute that the expenditure in question was incurred by the assessee for the purpose of construction/erection of cellular towers which were abandoned due to the reason that the same were not found suitable. The authorities below had disallowed the claim of the assessee on two reasons viz. (i) the expenditure was incurred for bringing up a capital asset into existence.(ii) the capital asset i.e., cellular sites/towers would be the new source of income.
- As far as the cellular towers being new source of income are concerned, the towers were erected for the purpose of assessee's own business of providing cellular services to its customers. Therefore, the tower is only a mean through which the assessee is able to provide cellular services and it is not an independent source of income. It is only to facilitate the assessee to manage and run the business of providing cellular services in a more efficient, convenient and profitable manner. Therefore, when the towers are not exclusively meant for leasing out to third parties for earning the revenue but used for transmission of telephone signals of assessee's own cellular services then it cannot be said that the towers which are used for the assessee's own business are new source of income.

- A cellular tower can be a new independent source of income if it is erected exclusively for leasing out to the other operators. Since this project of erecting towers was undisputedly abandoned by the assessee, therefore, there was no question of any new asset came into existence. The expenditure no doubt was incurred wholly and exclusively for the purpose of assessee's business.
- Therefore, to examine the allow ability of such expenditure under section 37(1), the only requirement which has to be seen is that the expenditure is of revenue nature and not capital nature. There were series of decisions wherein the High Courts and Supreme Court had laid down the principle that if an expenditure is incurred for doing the business in a more convenient and profitable manner and has not resulted in bringing any new asset into existence then such expenditure is allowable as business expenditure. It is also pertinent to note that in the case in hand the expenditure has been incurred only in respect of the existing business and not for setting up of a new business or line of business.
- Since the expenditure was incurred for the project which could not be accomplished and it was intended to facilitate the assessee's business activity to be carried out more conveniently and profitably, therefore, the said expenditure is allowable revenue expenditure. Hence by following the decision of High Court of Jharkhand in the case of *CIT v. Tata Robins Fraser Ltd.* [\[2012\] 211 Taxman 257/26 taxmann.com 15](#) set aside the order of authorities below *qua* this issue and allow the claim of the assessee.