

## Exp. on repair and renovation of rented premises used for the purpose of business is revenue in nature

**Summary – The Mumbai ITAT in a recent case of Urban Infrastructure Venture Capital Ltd., (the Assessee) held that where assessee incurred expenditure on repairs and renovation of rented premises but neither any capital asset had been created nor enduring benefit had been derived and it was incurred merely for carrying on its business efficiently, it had to be treated as revenue in nature.**

### Facts

- The assessee was engaged in the business of investment manager/advisor. During the year under consideration the assessee had taken a new premises on rent and had incurred expenses on repair and renovation etc. These expenses were incurred on tiling, plumbing, false ceiling, etc. which could not be reused on vacation of premises.
- The Assessing Officer disallowed expenses on ground that they were incurred on capital account. The Assessing Officer observed that the expenses were in respect of civil work, tiling work, marble work, fittings, fixtures, interior work, etc. which could not be taken as revenue expenditure as claimed by the assessee as these were major renovation expenses in the nature of capital and since the property was taken on lease, the assessee was entitled to depreciation only.
- On appeal, the Commissioner (Appeals) sustained the disallowance on the basis of *Explanation (1)* to section 32.
- On further appeal to the Tribunal the assessee submitted that no new asset had been created which could be said to have been given any enduring benefit and all the renovation was done by the assessee to effectively carry on its business activity. None of the items on which the expenses incurred could be reused.

### Held

- The assessee is engaged in the business of investment manager/advisor. As per the submissions made by the assessee before the Commissioner (Appeals), it acquired office in the locality of Nariman Point with a view to enhance its business.
- It was submitted that the assessee did not do any construction/improvement of building structure and the said expenses did not bring into existence any new asset and are allowable as deduction under section 30. In order to make the premises conducive to the business needs, it was required to make some renovation / changes including refurbishing. The nature of business of the assessee needs a posh office as the visitors / clients are normally corporate executives and high net-worth individuals. It was submitted that during the course of its business, the assessee had to cater high profile clients both Indian as well as foreign. In the circumstances, the office premises are required to be kept to a good standard. The expenditure incurred by the assessee was in order to meet these business requirements. The renovation expenses were in connection with modifying the cabins,

cubicles, laying good marbles, painting and other related expenditure. These expenditure were incurred and were necessary for the purpose of business to carry it more efficiently and also for creating good environment for the staff as well as the clients. These expenditure were incurred wholly and exclusively for the purpose of business. The repair/renovation work carried out at the premises which were not owned by the assessee but were taken on lease. The expenditure incurred, as can be seen from the details furnished, has not created any capital asset nor it has given the benefit of enduring nature. None of the expenditure entails any structural change or extension or improvement of the building, therefore, *Explanation 1* to section 32(1) will not be applicable.

- The assessee did not carry out any structural change in the building. The nature of expenditure is labour charges, breaking of walls and clearing of flooring etc; labour charges for removing old floor breaking, marble fixing on floor and wall; Interior and allied work includes wooden carpenter work, false ceiling, plumbing work, masonry work, flooring work, paint and polish, labour expenses etc; Interior and allied work including painting carpenter material, civil, plumbing, masonry work and labour expenses; supply of vitrified tiles; marble slabs, bathroom flooring and wall tiles, and professional fees. All these changes are made in the internal part of the structure. It is not the case of the department that this expenditure has not been genuinely incurred by the assessee. As per the submission of the assessee, these changes were made in connection with the modifying cabins, cubicles, laying good marbles, painting and other related expenditure in order to meet its business requirements of keeping a good standard office. No capital asset has been created and no enduring benefit has been derived. According to the facts of the present case, there is justification in the case of the assessee. The Assessing Officer as well as Commissioner (Appeals) have failed to properly appreciate the facts of the case and have incorrectly arrived at a conclusion that these expenses were in the nature of capital. By incurring these expenses the assessee did not bring into existence an asset of a permanent nature.
- In the present case no new asset or new advantage has been brought into existence by the assessee, it cannot be said that the assessee has incurred capital expenditure and quantum of expenditure alone also cannot be considered sufficient to arrive at a conclusion that the expenditure is in the nature of capital. What is necessary to see is as to whether the expenditure is in the nature of capital or it is in the nature of revenue.
- Therefore, it has to be held that the nature of expenditure incurred by the assessee on the premises taken on rent was in the nature of revenue since no new asset has been created and the changes were made by the assessee for efficiently carrying on its business and the items on which expenditure was made could not be reused on vacation of premises. The contention that the items on which the expenditure was made could not be reused on vacation was even raised before Assessing Officer in the assessment order. Therefore, it cannot be said that the expenditure incurred by the assessee on repair and renovation was in the nature of capital.
- Now question left that whether on the basis of *Explanation 1* to section 32(1) it can be said that despite being expenditure in the nature of revenue the assessee will only be entitled for

depreciation as it has been the case of Assessing Officer and Commissioner (Appeals) that due to application of *Explanation 1* to section 32(1) the assessee is entitled to claim only depreciation on the expenditure incurred by it.

- The pre-condition to invoke the provision of *Explanation 1* after the second proviso to section 32(1)(iii) is that expenditure itself should be capital in nature. If the expenditure by its nature itself is not capital in nature and its nature is revenue then provisions of *Explanation 1* after second proviso to section 32(1)(iii) will not be applicable at all. It has already been pointed out that the nature of expenditure incurred by the assessee in respect of renovation, or extension or improvement to the building not belonging to assessee are in the nature of revenue. Therefore, it is held that even on the basis of *Explanation 1* after the second proviso to section 32(1)(iii), the assessee cannot be denied for the deduction of impugned expenses which are revenue in nature.
- In view of above discussion, the issue is decided in favour of the assessee.