

Exp. incurred by cable operator in laying cables for providing cable connections to viewers was revenue in nature

Summary – The Chennai ITAT in a recent case of Gemini TV (P.) Ltd., (the Assessee) held that where assessee company providing cable connections, incurred expenditure in laying cables, said expenditure was to be regarded as revenue in nature.

Facts

- The assessee was a company running cable connections. It incurred huge expenditure in laying cables for providing cable connections to domestic viewers. The assessee showed the expenditure in its profit and loss account for both the years as revenue expenditure incurred for the purpose of carrying on its business.
- The Assessing Officer held that the assessee had secured an enduring benefit by laying down the cables and as such, the expenditure incurred was capital in nature. He, accordingly, disallowed the cable laying expenditure claimed by the assessee.
- On revenue's appeal:

Held

- The cables are laid by the assessee underground of public roads or on the electric poles. The cables laid down underground of public roads are susceptible to digging, damage by other public agencies laying down cables and pipes for supply of water, telecommunication service, etc. In these circumstances, the assessee cannot retrieve the cables once laid under the earth. Even if the cables are retrievable, they will be of no use.
- The places where the cables are laid by the assessee are not the properties of the assessee, but they are public properties. The assessee is permitted to lay the cable on the basis of licence issued by the concerned local authorities. The assessee has no control over the land utilized for laying the cables or on the electric poles used for transmitting the cable from place to place. It is to be seen that laying of cable is more labour oriented and even if the assessee wants to retrieve those cables, the labour cost involved would be prohibitive.
- The Commissioner (Appeals) rightly opined that even though the cables are laid by the assessee for carrying on business, the cables laid down by the assessee did not satisfy the basic features of a capital asset. The question of enduring benefit in the present case is only 'relative'. It is related to safeguarding and protection of the cable laid down underground or drawn over the electric poles. If an external agency interfaces and the cables are damaged, the assessee has no course of action. The assessee can neither retrieve the cable profitably, nor can it protect the cables by itself.

- In these circumstances, the cost involved in laying the cables is a sunk cost even though the assessee may get the benefit out of the cable for a period of more than one year. That longevity of the facility alone cannot make the cable as a capital asset in the hands of the assessee. The assessee does not have physical possession of the cable and once laid down, it is gone for all.
- In the facts and in the circumstances of the case, the Commissioner (Appeals) has rightly held that the cable laying expenditure in the hands of the assessee is revenue in nature.