

Exp. on maintenance of I-T system during restructuring of Co. was an allowable revenue exp.

Summary – The High Court of Gujarat in a recent case of Gujarat Urja Vikas Ltd., (the Assessee) held that where expenses towards IT system maintenance in respect of restructuring of a company was not having enduring benefit and as no asset was brought into existence on such expenses, said expenditure could not be capital in nature

Facts

- The assessee company was engaged in the business of generation, transmission and distribution of electricity in the State of Gujarat. The erstwhile Gujarat Electricity Board in a process of restructuring was demerged into seven different companies and assessee company was of the resulting companies. The Assessing Officer was of the opinion that an expenditure of Rs. 606.52 lacs claimed under "Legal & Professional Fees" pertained to reorganization of the business of erstwhile Gujarat Electricity Board by way of demerger and also included expenditure pertaining to issue of allotment of shares; expenditure pertaining to Internet Bandwidth, supply and installation of software, legal and professional fees in respect of restructuring, etc. These expenses according to the Assessing Officer were not the business expenditures, but, were capital in nature. Accordingly, the total amount of Rs. 606.52 lacs had been disallowed.
- On appeal, the Commissioner (Appeals) extensively dealt with the issue and held in favour of the assessee.
- The Tribunal also concurred with the findings of the Commissioner (Appeals) on appeal.

Held

- It is worth noting that except for a sum of Rs. 1.10 crores said to have been expended towards IT system maintenance, the Department has hardly any resistance in treating such amount as business expenditure.
- The only emphasis is on the sum of Rs. 1.10 crores which has been spent towards IT system by 'GIP' Limited. As could be noticed, this was for the purpose of supporting LAN networking for providing IT professional facility management service and also for co-ordination with BSNL for internet connectivity and providing IT providing and upgrading internet bandwidth. It can be noted that such consultancy work and preparation of ARR can be said to be connected with the business of the assessee.
- Before dilating further on this issue, a reference needs to be made in this regard to the decision in case of *CIT v. Gujarat State Fertilizers & Chemicals Ltd.* [\[2013\] 358 ITR 323/217 Taxman 229/36 taxmann.com 230 \(Guj.\)](#) wherein question was with regard to payment to financial consultants for professional services in connection with the corporation debt restructuring by negotiating with Banks and Financial Institutions. Such expenditure was considered for the purpose of business and

allowable in entirety in the year in which it was incurred and it was held to be revenue in nature and not capital.

- Reference to a decision of Supreme Court in case of Madras *Industrial Investment Corpn. Ltd. v. CIT* [1997] 225 ITR 802/91 Taxman 340 (SC) where the Apex Court was deciding whether a particular expenditure was revenue expenditure incurred for the purpose of business or capital in nature. Such question needs to be determined on a consideration of all the facts and circumstances of the case and by application of the principle of commercial expediency.
- In the instant case also, this decision would have a direct applicability particularly when expenditure is incurred for the purpose of business. Considering the principle of commercial trading, when the question is to be addressed, both the Commissioner (Appeals) as well as the Tribunal rightly held it to be revenue in nature and the same cannot be said to be capital. It is quite apparent that the fees paid for support for LAN work; providing and upgradation of Internet Bandwidth, or for co-ordination with BSNL for internet connectivity, etc. are not having any enduring benefit. If any consultancy is required for the said purpose, the amount clearly would come under the head of Consultancy and that surely could not be considered as capital in nature. In the present form, the expenditure made was at the best for continuing the benefit for one year. Resultantly, such payment cannot be categorized as capital in nature as no asset is brought into existence on account of such payment.
- Tax appeal is dismissed and disposed of accordingly.