

Pen drive, networking equipment and printers are part of computer system; eligible for 60% depreciation

Summary – The Delhi ITAT in a recent case of GE Capital Business Process Management Services (P.) Ltd., (the Assessee) held that where assessee, engaged in business of process management services for credit cards, paid licence fee in order to get limited right to use a software programme belonging to other company, amount so paid was to be allowed as business expenditure

Printers, switches, networking equipments, UPS and pen drives are integral part of computer system and, hence, eligible for depreciation at higher rate of 60 per cent

Facts

- The assessee company was engaged in the business of process management services for Credit cards. During relevant year, assessee paid licence fee to GECC, USA, for use of 'vision plus software', which was an accounts receivable processing software for credit cards transaction.
- The assessee filed its return claiming deduction of licence fee as business expenditure under section 37(1).
- The Assessing Officer opined that licence agreement provided exclusive right to use vision plus software which resulted in enduring benefit to the assessee; that the consideration was in respect of grant of license and that the information was not only in relation to use of license, but co-ordination and connectivity services were also provided by GECC(USA).
- The Assessing Officer thus rejected assessee's claim holding that payment of licence fee was in the nature of capital expenditure.
- The Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal:

Held

- It is notable that in terms of end-user licence agreement, the assessee company is specifically restricted to make copies of the software and make it available to any other period. There is also a bar on the assessee for use of software for the purpose other than that mentioned in the agreement. The assessee does not possess right either to sell it or alienate in any other manner.
- Similarly, clause 5 and its sub-clauses give the right of termination of license agreement to either parties under various circumstances. It is worthwhile to note that in case of default, if any, committed by the assessee, the rights of assessee to use the software would stand terminated forthwith. Under clause 5.5, the assessee is required to deliver the licensed program back immediately to GECC(USA) after removing the same from its systems on termination of agreement.
- The license agreement allows GECC to receive license fee from assessee on quarterly basis as mutually agreed upon. The agreement provides for periodic payment for use of software to GECC,

which is subject matter of renewal and revision every calendar year. No case is made out by the department to assume that the periodic payments made by the assessee were the instalments for acquisition of such software and the payment was not for mere usage of software. It is a matter of fact on record that GECC (USA) itself has received the right to use the software internally including its group entities for its business and it does not have any right to commercially exploit the software. The assessee is vested with limited right to use licensed program during the currency of license agreement.

- The agreement nowhere provides any exclusive right to the assessee, but the assessee was vested with the right to use the licensed program for facilitating its business operations enabling the assessee day-to-day management of business and to work with more efficiency. In view of all these terms of agreement and the facts and circumstances attending to the case, it is opined that end user license agreement in the instance case does not have the effect of any enduring benefit for holding the same as capital in nature.
- The revenue has failed to rebut the contention of the assessee that the impugned software is an application software and is being used for accounting purposes. Such software are used by various banks and financial institutions. Moreover, the Commissioner (Appeals) in succeeding assessment years 2008-09, 2010-11 and 2011-12 has categorically gave finding of fact that the software is a application software which is routine in nature and used for accounting purposes. Therefore, right to use the vision plus software program does not have any effect of providing enduring benefit and the payment made to GECC(USA) is only the license fees and not the price for acquisition of capital asset.
- The assessee did not acquire any ownership on the software and after termination of license agreement, all the rights and title remained with GECC (USA). The revenue failed to dislodge the findings of the Commissioner (Appeals) given in the orders passed for subsequent years after considering the same license agreement. It is also a matter of record that the assessee has returned its income for the relevant previous year at Rs. 152.88 crores whereas the amount expended towards use of routine application software is Rs. 2.19 crores which is 1.43 per cent. This shows that this software is not the soul of assessee's business as argued by the revenue.
- In view of aforesaid, it is held that license fee etc. paid by the assessee to GECC(USA) was revenue expenditure deductible under section 37. The appeal of the assessee is accordingly allowed.