

Fee for implementation of SAP software is revenue exp, says Bombay HC

Summary – The High Court of Bombay in a recent case of KSB Pumps Ltd., (the Assessee) held that where status of assessee was a non-resident, fact that assessee was already employed before leaving India should not effect his residential status

Facts

- KSB Germany, owners of SAP software programme was an associate of the assessee. During the relevant assessment years the assessee along with KSB decided to implement SAP programme in the assessee-company. KSB provided various services so as to adapt its system to use the SAP programme for which the assessee during the subject assessment years paid consideration for the professional services and claimed the same to be revenue expenditure.
- The Assessing Officer rejected the assessee's claim and held that on application of functional test, the expenditure incurred was capital in nature.
- The Commissioner (Appeals) found that no amount was paid towards purchase of SAP programme. He held that payment made by the assessee to KSB Germany were in the nature of professional fees for implementation of the SAP programme in India. Consequently, he allowed the assessee's appeal holding the same to be revenue expenditure.
- Further, the Tribunal upheld the findings of the Commissioner (Appeals).
- On appeal to the High Court:

Held

- The Commissioner (Appeals) as well as the Tribunal have concurrently rendered a finding of fact that there was no acquisition/purchase of the SAP programme by the respondent-assessee. Consequently, occasion to apply depreciation in accordance with the Income-tax Rules would not arise in the present case.
- Be that as it may, the impugned orders of the Commissioner (Appeals) as well as the Tribunal record that fact that the professional charges paid for upgrading the software has made the respondent assessee's operation more efficient. It did not result in any profit making apparatus coming into existence.
- The attention was also drawn to the decision of this Court in *CIT v. Geoffrey Manners & Co. Ltd.* [2014] 226 Taxman 135 (Mag.)/49 taxmann.com 320 wherein in the context of installation of software programme, the Court has observed that technology advancement is an aspect which must be taken judicial note of. So also, machinery becoming obsolete, there is necessity of acquiring further technology. This is to meet the growing competition and considering trends in the market. Therefore, such expenditure will have to be treated as revenue expenditure.

- Therefore, in view of the Court taking note of rapid technological development, purchase of technology may not lead to any enduring benefit as the same may have to be upgraded very soon. In any case, the finding of fact in this case is that there is no purchase of technology by the respondent assessee. Therefore, question as proposed does not give rise to any substantial question of law. Thus, not entertained.