

Exp. incurred on acquiring licenses to use software which didn't confer any enduring right was allowable exp.

Summary – The High Court of Delhi in a recent case of Oriental Bank of Commerce., (the Assessee) held that Expenditure incurred by assessee on acquiring licences to use software which did not confer any enduring benefit on assessee, was to be allowed as deduction under section 37(1)

Facts

- The assessee/bank incurred expenditure towards acquiring various categories of software. The Assessing Officer concluded that the software expenses fell in the capital stream.
- The Commissioner (Appeals) as well as the Tribunal upheld the order of the Assessing Officer.
- On appeal:

Held

- The nature of the articles acquire are licenses. They do not confer any enduring right - much less a permanent right as in the nature of acquisition of property. These copyright licenses are used for the duration, spelt out by the licensor/intellectual property owner. Furthermore and importantly, the bank's objective was not to carry on software business, rather it uses computer software as a tool to maximize its performance and streamline its efficiency.
- The mere circumstances that the depreciation rate is spelt out in the Schedule to the Act is not conclusive as to the nature of the expenditure and whether it resulted an enduring advantage to a particular assessee. It is nobody's case that assessee is dealing with computer softwares or is in the business of any related services. Rather it uses specific customized software, which is specific to its banking activities. But for the use of such software, the nature of expenditure otherwise incurred for streamlining its functions, *i.e.*, towards fee payable to the consultants for systems and employment of special professionals to carry on the tasks that the software in fact performs, would have fallen undoubtedly in the revenue stream. Taking these into account and the further circumstances that the software itself would have run its course or life span as it were, given that the earlier assessment year in question is 2008-09, it is held that the Tribunal was not correct in law in holding that software expenses incurred by the assessee during the assessment year were in the nature of capital expenditure.