

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.382/Coch/2018 : Asst.Year 2009-2010

Sri.Josepherson Antony T.C.6/1477, Kunnel House PTP Nagar Trivandrum – 695 038. PAN : ACFPA4184J.	Vs.	The Dy.Commissioner of Income-tax, Circle 1(2) Trivandrum.
(Appellant)		(Respondent)

Appellant by : --- None --- (written submission)

Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 14.01.2019	Date of Pronouncement : 15.01.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 17.05.2018. The relevant assessment year is 2009-2010.

2. The solitary issue that is raised is whether software and maintenance expenses amounting to Rs.7,00,462 is to be treated as a revenue expenditure or capital expenditure?

3. Brief facts of the case are as follows:-

The assessee is a sole proprietor of Hilton Motors and Hilton Autos engaged in the sales and service of Hyundai motor cars and Yamaha motor cycles. For the assessment year 2009-2010, return of income was filed on 30.09.2009

declaring total income of Rs.75,21,466. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 12.12.2011 on a total income of Rs.1,08,83,114. Subsequently, the assessment was reopened by issuance of notice u/s 148 of the I.T.Act. The assessment u/s 143(3) r.w.s. 147 of the I.T.Act was completed vide order dated 21.03.2014. In the said reassessment an addition of Rs.7,00,462 was made. The expenses debited under profit and loss account as software support and maintenance expenses was disallowed by the A.O. The Assessing Officer was of the view that the said expenses cannot be considered as revenue expenditure since there was an enduring benefit to the assessee. The Assessing Officer concluded that the payment was made for acquiring an asset and the expenses cannot be considered as revenue expenditure. Therefore, the Assessing Officer disallowed an amount of Rs.7,00,462 after allowing depreciation on the expenses.

4. Aggrieved by the disallowance of expenses of Rs.7,00,462, the assessee preferred an appeal before the first appellate authority. The CIT(A) dismissed the appeal of the assessee. The CIT(A) held that the expenses is not of revenue in nature and the assessee had received an enduring benefit. The CIT(A) concluded that the expenditure has to be necessarily treated as a capital expenditure. The relevant finding of the CIT(A) reads as follows:-

"5. I considered the rival contentions. The crux of the issue is whether the payment made for the

software which the Hundai Motors supplied to the assessee is to be treated as capital expenditure or revenue expenditure. It is basically a software installed in the system kept in the assessee's office. This software is to facilitate the billing process and to provide fast and secured service to the buyers of cars and accessories from the assessee's proprietary concern. It is incidental that the software was supplied by Hundai Motors. The same could have been purchased by the assessee from somebody else. It is because, it was supplied by Hundai Motors, the assessee cannot say that it is revenue in nature. It cannot be treated as revenue expenditure since it is not a product of use and throw type but is a product of continuous and permanent use. It would definitely bringing enduring benefit to the assessee and therefore, shall necessarily be treated as a capital asset. It is not the case of assessee that the software installed failed often and the assessee was forced to replace the software again and again. It is also not the case of assessee that the one which was installed has not brought out hitherto enduring benefit to him. Considering all the above, I don't find any necessary to interfere to the decision the Assessing Officer has taken and accordingly, the same is confirmed. In the result, the appeal stands dismissed."

5. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. The assessee has filed a brief written submission. The content of the same is that the assessee was never the owner of the computer software installed by Hundai Motors. It was stated that the expenses are incurred for the maintenance of the software and software was installed to facilitate the billing process of purchase of cars and accessories in an efficient manner. It was submitted that the dealership agreement dated

20.05.1999 makes it clear that the software is to be mandatorily installed from a vendor as per the direction of Hyundai Motors. It was further submitted that the said software charges are recurring nature and were debited in the subsequent assessment years, which was never subjected to disallowance.

6. The learned Departmental Representative, on the other hand, strongly supported the orders passed by the Income Tax Authorities.

7. We have heard the learned Departmental Representative and perused the material on record. Though none was present on behalf of the assessee, there was a letter filed by the learned AR requesting the Tribunal to dispose off the appeal on merits, after duly considering the written submission filed by the assessee. The solitary issue that was raised for our consideration is whether the software expenses termed as Global Dealer Management System (GDMS) charges amounting to Rs.7,00,462 and debited in the profit and loss account as administrative expenses is an allowable expenses or not? In the instant case, the assessee is not the owner of the software. The software was supplied by the Hyundai Motors. The assessee had made similar payment in the subsequent years and the payments were made for the usage of the software and not for bringing into existence a capital asset. The amounts are recovered for usage of software year after year. The details of such charges incurred for various

assessment years are detailed in the paper book submitted by the assessee. If the expenses are of capital nature, the assessee need not have incurred such expenses on a recurring basis. A copy of the dealership agreement dated 20.05.1999, which was in force for the current assessment year is placed on record. Clause (d) of the said agreement relates to Data Processing System. In the relevant clause, it is specifically mentioned that the software shall be procured, installed, maintained and upgraded from a source designated by the vehicle manufacturer. Therefore, it is clear that the assessee cannot procure the software from anywhere except from the source mentioned by Hyundai Motors. It is also a fact that for the software usage alone the payments are incurred by the assessee. Therefore, it is a recurring expense for better efficiency of running of the assessee's business, i.e. the dealership of Hyundai Motors, and the expenditure cannot be termed as a capital expenditure. Hence we direct the expenses of GDMS debited to the profit and loss account for the relevant assessment year amounting to Rs.7,00,462 to be allowed as revenue expenditure. It is ordered accordingly.

8. In the result, assessee's appeal is allowed.

Order pronounced on this 15th day of January, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 15th January, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT, Thiruvananthapuram.
4. The CIT(Appeals) Thiruvananthapuram
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin