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Court : Income Tax Appellate Tribunal ITAT

Decided On : May-24-1985

Reported in : (1986)17ITD6(Bang.)

Appellant : inspecting Assistant

Respondent : Commission and General Agency.

Judgement :

Per Shri B. V. Venkataramaiah, Accountant Member - The appeal is by the revenue against the allowances of Rs. 94,976 as the revenue expenditure by the Commissioner (Appeals).

2. The assessee is a dealer for Hindustan Computers Ltd. It purchased a computer for purposes of demonstration and also to provides data processing service to its customers. It claimed a deduction of Rs. 1,24,964 as technical services paid to Hindustan Computers Ltd. The IAC allowed Rs. 20,000 out of the claim and treated the balance of Rs. 1,04,964 as capital expenditure. He also allowed depreciation at 20 per cent. In appeal the assessee, relying on a letter from Hindustan Computers Ltd. dated 8-7-1983, submitted before the Commissioner (Appeals) that out of Rs. 1,24,964 Rs. 20,000 was for maintenance of the computer for a period of one year and Rs. 10,000 surcharge for instant attention after office hours in case of breakdown and the balance of Rs. 94,976 was towards the following services : (d) Deputing one of the senior system analysts for development of customised software.

It was argued that the above items of expenditure are revenue in nature. The Commissioner (Appeals) after referring to various case laws allowed the assessee's claim. The revenue is in appeal against the allowance of Rs. 94,976.

3. The main thrust of the assessee's argument against the allowance of the above sum was that the payment constituted part and parcel of the purchase price of the computer. When the assessee had capitalised the value of the computer purchased for purposes of demonstration it should have likewise capitalised the sum of Rs. 94,976 also.

The learned representative of the assessee relied on the order of the Commissioner (Appeals).

4. We requested the assessee's representative to make available the necessary correspondence between the assessee and Hindustan Computers Ltd. to know the precise nature of the technical services rendered by Hindustan Computers Ltd. and the software purchased by the assessee. It is now common knowledge that the computer is known as the hardware and the system and the programmes which go along with it to put the computer to the use for which it is required by the user, be it scientific or commercial, is known as the software. Software, therefore, is the technical know-how that has to be purchased by the user of the computer to make effective use of the machine. The computer is programmed to receive and retain the information that is required and later retrieve the information, verify, make the necessary calculations, analysis, etc., and then give the information in the required form to the user. This is done with the help of the software purchased. Therefore, the purchase of the software has to be treated as a capital expenditure.

(i) The information given by the assessee shows that the expenditure of Rs. 94,976 is divided into four categories : (a), (b), (c) and (d) vide paragraph 2 supra. It is obvious that the expenditure involved in (b), (c) and (d) are of the revenue nature while the expenditure coming under item (a) will be capital. (ii) The letter from Hindustan Computers Ltd. dated 31-7-1981 gives the break-up. The relevant portions of the letter are reproduced below : "... In order to gear you towards these objectives we have the following plans : (1) The computer which has been supplied has extensive edit facilities.

In addition we will supply you with automatic program generator (oftware which will reduce the program development time considerably.

The cost of this software is Rs. 20,000.

(2) As it is very important to know the full capability of the computer, we will train 3 of your people in programming and system analysis in our training centre in Madras. The duration of training is 3 weeks, and the cost of training is Rs. 20,000 for 3 people which includes lodging facilities.

(3) In order to supervise and control the various software development project which we have entrusted to you and advise your programmers from time to time, we will be deputing a senior systems analyst. The charge for it is Rs. 35,000 which includes all expenses.

(4) From time to time, we will be required to test the hardware and software packages in order to ensure its proper performance we charge an amount of Rs. 15,000 for carrying out those evaluation tests.

Please note we have already charged the abovementioned amounts as technical service charges. We will provide these services for a period of one year from the date of installation." From the above, it is clear that the cost of the software is Rs. 20,000 and this has to be capitalised. We are, however, not in agreement with the submission made by the assessee that due to the high rate of technological obsolescence the purchase of software should also be treated as revenue expenditure. The assessee is continuing to use the same system and it has sufficient clientele which does not require anything more sophisticated than the present system in operation. We, accordingly, restore the addition made by the IAC to the extent of Rs. 20,000 on which the IAC will allow depreciation as usual.

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