

Exp. incurred to obtain legally enforceable agreement with Ministry of Civil Aviation is to be capitalised: HC

Facts of the case: Bangalore International Airport Ltd. v. DCIT - [2023] (Karnataka)

Assessee was an airport company, executed various agreements with Central Government, and State Government etc. for acquisition of certain rights and incurred certain expenditures.

Assessee claimed depreciation on such expenditure by treating it as capital expense. During the assessment proceedings, the Assessing Officer (AO) discovered that the payment was made towards legal, technical and management fees and denied to treat such expense as capital expenditure.

On appeal, the CIT(A) confirmed AO's order which was subsequently ratified by the Tribunal. Aggrieved by the order, assessee preferred an appeal to the Karnataka High Court.

Decision of the case :

- The Court held that the assessee acquired business & commercial rights and licenses rendering it to be in the nature of intangible assets. Under these agreements, assessee was required to pay a fixed percentage i.e., 4% of the Gross Revenue as a concession fee every year to the Central Government. The lower authorities recorded that the said amount payable every year was a revenue expenditure. To this extent, CIT(A) was correct.
- However, the assessee's claim of depreciation is to be allowed on expenditure incurred to get the Concession Agreement and respective expenditure to obtain other agreements. These expenses were mostly legal in nature and were incurred only to obtain legally enforceable agreements.
- A concession or benefit that arises over a period of time as per the agreement will constitute an intangible asset and the assessee is entitled to claim depreciation on it. This finding had not been challenged by revenue before Tribunal and thus the assessee was entitled for the benefit.