

DHC in case of [Whirlpool](#) (ITAT order reported at 114 TTJ 211):
BUSINESS SET UP VERSUS COMMENCEMENT SECTION 3 :
FINANCIAL SECTOR

*“4. On the basis of the aforesaid, the issue which arises is when can the assessee be said to have set up its business. Is the expression “setting up of the business” same as “commencement of business?” The ITAT has held that the expression “setting up of the business in the previous year” as per Section 3 of the Income Tax is different from commencement of the business and has relied upon the judgments of different courts including of this Court in the case of **CIT Vs. Hughes Escorts Communications Ltd., 311 ITR 253.***

*5. This Court in the case of **Hughes Escorts Communications Ltd.** (supra) has clearly held that a business is set up though the same may not have commenced and the expenditure incurred after the date of setting up has to be allowed as a deduction. It was further held that the question as to when the business is set up depends on the facts of each case and the nature of the business and no hard and fast rule can be laid down as to when the business was set up.*

*“ITAT Order approved/quoted ...**In the case of a company engaged in rendering financial services**, it is possible to say that the business is set up when the directors are appointed, staff such as regional and branch managers are appointed and their salaries are paid, computers are acquired and installed and the company is ready to commence business. It cannot be said that the business was set up only when the bank account was opened on 01.02.1996 because prior thereto the company, though it did not have a bank account, was incurring the expenditure through Kelvinator India Ltd or Expo Machinery Ltd. The absence of a bank account cannot impede the setting up of the business. We may advert to the evidence in this behalf. Computers and peripherals were purchased vide order placed on HCL Hewlett Packard Ltd of Noida on 04.09.1995 and the required end-user certificate was also issued. The total cost of the purchase was Rs.29.84 lakhs (pages 21-23 of the paper book). Branch managers at Bhopal, Bhubaneswar and Pune were appointed in October 1995 (pages 37-42 of the paper book). Regional managers at Bombay, Calcutta and Gauhati were appointed during the same time (pages 43 to 48 of the paper book). Page 2 of the assessment order shows that the salaries were paid from November 1995 including allowances, bonus, gratuity and contribution to provident and other funds. The amount of such payments have also been given therein and*

are not reproduced here for the sake of brevity. The office rent of Rs.17500 for November and Rs.25000 each for December 1995 and January 1996 have also been paid. It is thus clear that the establishment and staff were put in place by the end of October 1995 and the company was ready to commence its business from 01.11.1995. M/s S.R.Batliboi Consultants Pvt Ltd had also submitted their bill dated 30th October 1995 for Rs.2,91,486 for professional services rendered in connection with recruitment of 19 candidates for the post of accounts manager and incidental expenses. The fact that the foreign loan and FIPB approval for equity investment by the Whirlpool Corporation of USA were given in January, 1996 does not mean that the business was not set up before these events. These are not statutory formalities and even without the foreign loan and the equity participation of the assessee-company was in a position to carry on the business in accordance with the objects clause of its memorandum of association from November 1995 when it had its own offices, branch and regional managers and staff, computers installed and was ready to commence its activities...”

*7. The counsel for the Revenue has relied upon the decision in the case of **Commissioner of Wealth Tax vs. Ramaraju Surgical Cotton Mills Ltd.** to canvass the proposition that it is only when actual business operation was commenced, a business is set up. We feel that the decision of the Supreme Court in **Ramaraju Surgical Cotton Mills Ltd.** is not applicable to the facts of the present case because the said judgment was dealing with the provision of Section 5(1)(xxi) of the Wealth Tax Act, 1957 along with its proviso and the language of the main section and the proviso were wholly different...”*