



• IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 538/2005

M/S RAM BAGH PALACE HOTEL P. L ..... Appellant  
Through Mr.S.Ganesh, Sr.Advocate with  
Ms.Anjali K.Verma & Mr.Niraj  
Gupta, Advocates

versus

COMMISSIONER OF INCOME TAX & ..... Respondent  
Through Mr.Sanjeev Sabharwal, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER**  
**10.07.2006**

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The Appellant is aggrieved by an order dated 15<sup>th</sup> December, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA No. 2506/Del/99 relevant for the Assessment Year 1995-96.

We have heard learned counsel for the parties and are of the view that a short but substantial question of law arises in this appeal and that it may be appropriate if the matter is disposed of at this stage. Learned counsel for the parties have no objection if the matter is taken up for final disposal immediately.



The two substantial questions of law that arise for consideration

are:

(a) Whether the Income Tax Appellate Tribunal was justified in reversing the order of the Commissioner of Income Tax (Appeals) without going into the nature of the items of expenditure and without giving any basis or reason for the same?

(b) Whether the Income Tax Appellate Tribunal was justified in restoring the order of the Assessing Officer with regard to the items of expenditure which were not even challenged by the respondent?

It appears that a dispute arose whether the following five items of expenditure could be treated as capital expenditure or revenue expenditure. These five items are as follows:-

(a) Rs. 57,995.87 paid to M/s Mayur Glass Industries for supply of glass for a room in the new wing of the hotel Rambagh-Palace, Jaipur.

(b) Rs. 4,74,100/- paid to M/s Saini Construction for the development of a parking area for the hotel.

(c) Rs. 2,50,000/- paid to M/s All India Tennis Association for preparing a Deco tar Tennis Court.

(d) Rs. 66,282/- paid to M/s Govind Ram Contractor for preparing a dance stage at Panghat.

(e) Rs. 2,22,692/- paid to Mr. Govind Ram Contractor for civil work of Tennis Court fencing of Panghat and laundry room etc.

In the appeal preferred by the Revenue in the Tribunal, a



grievance was made only with regard to Item Nos. (b), (c) and (e) and no ground was urged in the Memorandum of Appeal with regard to Item Nos. (a) and (d) above.

It may be mentioned at this stage that the Assessing Officer had come to the conclusion that the aforesaid items of expenditure represented capital expenditure against which the Assessee filed an appeal before the Commissioner of Income Tax (Appeals).

By an order dated 28<sup>th</sup> January, 1999, the Commissioner of Income Tax (Appeals) discussed each item on merits and after a detailed analysis came to the conclusion that these items represented revenue expenditure since no new capital asset had been created.

Feeling aggrieved, the Revenue preferred an appeal before the Tribunal as aforementioned. We find from the order passed by the Tribunal that it has mainly quoted passages from three judgments, namely, ***Shri Digvijay Cement Company Ltd. vs CIT (1986) 159 ITR 253 (Gujarat), Vazir Sultan Tobacco Co. vs. CIT (1988) 174 ITR 689 (Andhra Pradesh) & CIT vs. Chelpark Company Ltd. 191 ITR 249 (Madras).***

Thereafter, having quoted these passages (which refer to a decision of the Supreme Court in the case of ***Empire Jute Co. Ltd. vs. CIT (1980) 124 ITR 1***), the Tribunal concluded as follows:-

"From the above cited cases, it is clear that the



test of enduring benefit is not obsolete. It has to be ascertained from the facts and circumstances of each case whether an expenditure is capital or revenue in nature. The test of enduring benefit can be applied if the facts so warrant. In the present case, the supply of glass for new wing, development of parking areas, preparing of tennis court, fencing panghat are all expenses relating to fixed capital and the advantage derived by the assessee company is of enduring nature. The advantage is permanent in character. Therefore, these expenses are capital outlays.

In view of the above circumstances, we restore the order of the Assessing Officer and set aside the order of the CIT (A). The sum of Rs. 10,71,069/- is added back in the assessee's income being expenses of capital nature. However, depreciation @ 20% would be allowed which works out to Rs. 2,14,213/-.

A perusal of the two paragraphs quoted above from the order of the Tribunal show that it has not at all given any reason for upsetting the view taken by the CIT(A).

With regard to the first substantial question of law, our attention has been drawn to a decision of this Court in ***Hindustan Times Works Ltd. vs. CIT (2005) 275 ITR 43*** in which this Court expressed the view that while reversing an order passed by the appellate authority, reasons are required to be given by the Tribunal. If a detailed reasoned order is passed by the appellate authority and the Tribunal is in agreement therewith, then perhaps no detailed reasoned order is



required to be given but if the Tribunal reverses the order passed (t the appellate authority, then detailed reasons should be given particularly since the decision of the Tribunal is considered to be final on facts.

The reasons given by the Tribunal for upsetting of the order of the CIT (A) do not show the basis on which the Tribunal has come to a conclusion that is different from the conclusion given by the CIT (A), apart from baldly stating that all the expenses incurred by the assessee relate to fixed capital and the advantage derived by the Assesee is of an enduring nature. We are not told why this is so. Following ***Hindustan Times Works Ltd.***, the order of the Tribunal deserves to be set aside. The first question is answered in the negative in favour of the Assessee and against the Revenue.

Learned counsel for the Assessee has pointed out, and we are only mentioning this without commenting on it that all these assets such as the parking area, tennis court and the fencing of Panghat and laundry room was already in existence much earlier and what was done by the Assessee was to carry out repairs needed over a period of time, and as such the expenses were not of a capital nature but of revenue nature.

Apart from the above, it has also been pointed by learned counsel for the Assessee that even though the Revenue had filed an



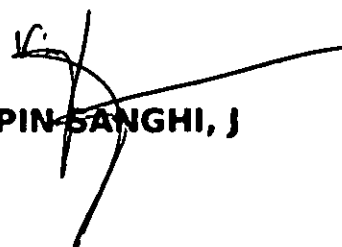
appeal only with regard to three items in dispute, the Tribunal has restored the assessment order with regard to all five items without even considering the grounds of appeal of the Revenue. It is submitted that this shows that the Tribunal has really not applied its mind to the issues that were the subject matter of the appeal.

We are in agreement with the last submission of learned counsel for the Appellant. The Tribunal has failed to take into account that the appeal of the Revenue was with respect to only three and not five items of expenditure, however minor the other two items may be. Consequently, the second question is answered in the negative, in favour of the Assessee and against the Revenue.

Under the circumstances, we are of the view that it would be appropriate if the impugned order is set aside and matter is remanded back to the file of the Tribunal so that the issues canvassed by the Revenue can be adjudicated on merits by the Tribunal which should then pass a reasoned order on the appeal.

The appeal is allowed as above. No costs.

  
**MADAN B. LOKUR, J**

  
**VIPIN SANGHI, J**

**JULY 10, 2006**  
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