



* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.387 of 2007

% Judgment reserved on: 18th April, 2007

Judgment delivered on: 25th April, 2007

THE COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDING
NEW DELHI

..... Appellant

Through: Ms. Rashmi Chopra, Adv.

Vs.

RELAXO FOOTWEARS LTD.,
316-316, ALLIED HOUSE,
INDERLOK CHOWK,
NEW DELHI

..... Respondent

Through: Nemo

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

V.B. GUPTA, J.

This is an appeal under Section 260A of the Income



Tax, 1961 (hereinafter referred to as 'Act') filed by Revenue challenging the order dated 11th August, 2006 passed by Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal') Delhi Bench 'C', in ITA No. 4701/Del/1998 and ITA No. 4795/Del/1998 for the assessment year 1995-96.

2. Brief facts of this case are that M/s. Relaxo Footwears Ltd. (for short 'the Assessee') is a company engaged in trading of all kinds of rubber footwears and in the year under consideration, the Assessee had commenced the business of manufacture and sale of Hawaii Chappals at its factory at Bahadurgarh. The Assessee filed the return of income on 30th November, 1995 disclosing total income of Rs.1,50,98,660/- and the same was processed under Section 143(1)(a) of the Act. During the course of assessment proceedings, the Assessing Officer noticed that Assessee has claimed pre-operative expenses of Rs.41,24,841/- in the computation of total income in respect of the expenses occurred on new factory and has also claimed capital issue expenses of Rs. 2,63,588/-. The Assessing Officer disallowed these claims of the Assessee by holding that pre-operative expenses cannot be written off in one go as done



by the Assessee and the capital issue expenses are allowable only after the public issue has been raised and subscribed.

3. Being dissatisfied with the order passed by the Assessing Officer, the Assessee filed an appeal before Commissioner of Income Tax (Appeal) who partly allowed the appeal of the Assessee.

4. The Revenue as well as Assessee challenged the order of Commissioner of Income Tax (Appeal) before the Tribunal. The Tribunal vide its impugned order allowed the appeal of the Assessee and dismissed that of the Revenue.

5. The case of the Revenue in the present appeal is that the expenses incurred in a new unit earlier to the commencement of manufacturing process have to be capitalised and the new business of the Assessee cannot be said to be the extension of the existing business. Further, the expenditure incurred in connection with the purchase and installation of plant and machinery (capital assets) is capital in nature and thus disallowable and the pre-operative expenses cannot be written off in one go but the same has to be capitalised as per provisions of law and



admissible depreciation has to be allowed thereon.

6. The question which arise for consideration in the present case is as to whether the nature of expenses are Revenue in nature, if they are incurred in respect of new unit which is the extension of old business. This aspect was considered by this Court in ***Commissioner of Income Tax v. Modi Industries Ltd., [1993] 200 ITR 341.*** In that case the assessee company, which manufactured various commodities like sugar, vanaspati, soaps, paints and varnish, torch and lantern, started manufacturing a new commodity, viz., special alloy wire and billets. Debentures were issued for raising funds for this new steel unit and the assessee incurred expenditure for the issue of debentures. The question was whether the expenditure incurred by the assessee in the year in which the unit had not started working was allowable as business expenditure. The Appellate Tribunal found that the management of the new unit and the earlier business were the same and there was unity of control and a common fund, and held that the manufacture of special alloy and billets was an extension of the assessee's business and not a new business and allowed



deduction of the expenditure. On a reference it was held that :-

"In the present case, however, the finding of fact arrived at by the Tribunal, on the basis of evidence on record, is that the management of the new business and the earlier business was the same and there was also unity of control and a common fund. Shri Rajendra submits that this finding is without any basis. But the Department has not challenged the correctness of this finding. The assessee, as noted by the Income-tax Officer, is engaged in the manufacture of various commodities like sugar, vanaspati, soaps, paints and varnish, torch, lantern, etc. All that the assessee did now was to start manufacturing a new commodity. In a larger sense the business of the assessee remained the same, viz., the business of manufacture. It was already manufacturing diverse items and a new item was added to this business. The facts found by the Tribunal are that there was complete unity of control and there was a common fund and these factors have been regarded as most material by the Supreme court as is evident from the case of Standard Refinery and Distillery Ltd. [1971] 79 ITR 589 (SC) and the other cases referred to therein.

In view of the above the only conclusion which can be arrived at, therefore, is that the Tribunal was justified in holding that the business of manufacture of special alloy wires and



billets was an extension of the business and not a new business. The question referred is, therefore, answered in the affirmative and in favour of the assessee."


7. It is a matter of record that before the Tribunal, the Senior Department Representative did not controvert the claim of the Assessee that there was complete unity of control and interlacing of the units. In the present case, the new unit was a part of the existing business and there is no dispute that there was unity of control and interlacing of the units.

8. Thus, the expenses incurred by the Assessee for the setting up of a new unit which was a part of the existing business are therefore to be allowed as a Revenue expenditure.

9. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.



10. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.


(V. B. GUPTA)
JUDGE

April 25, 2007
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(MADAN B. LOKUR)
JUDGE