



* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 05.09.2008

+ **ITA No. 1011 of 2008**

THE COMMISSIONER OF INCOME TAX,
DELHI-IV, NEW DELHI

..... Appellant

-versus-

INDIAN VISIT. COM PVT. LTD

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Premlata Bansal

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

yes

BADAR DURREZ AHMED, J (ORAL)

This appeal is directed against the order dated 23.02.2007 passed by the Income Tax Appellate Tribunal in respect of the assessment year 2001-02.



2. The only issue which arose for consideration before the Tribunal was whether the amount of Rs 20,23,317/- incurred by the assessee on development of its website was an expenditure of a capital nature or of a revenue nature. The assessee is engaged in the travel business and makes all kinds of arrangements for its clients such as booking of hotel rooms, providing taxi services, booking of air tickets and railway tickets etc. In its website, the assessee indicates the various destinations and places for which it can arrange travel, hotel booking etc. for its clients. The assessee's clients can use the assessee's website for the purposes of availing of the services provided by the assessee.

3. According to the Assessing Officer the expenditure of Rs 20,23,317/- made by the assessee in the year in question was of a capital nature inasmuch as it had acquired an asset which would provide the assessee with an enduring benefit. The same view was expressed by the Commissioner of Income-tax (Appeals). The Tribunal, however, took a different view and concluded that the said expenditure was of a revenue nature and was, therefore, allowable to the assessee. In so concluding, the Tribunal compared the website to an electronic brochure available to prospective customers. The



Tribunal was of the view that the website supplies information the scope and activity and the profile of the assessee. The Tribunal also noted that expenses had to be incurred by the assessee for registering and renewing the domain name and further expenses were required from time to time to constantly update the information on the website. It was also indicated that through the medium of the website on the Internet, the assessee could avoid services of middlemen like travel agents as well as other expenses such as expenditure on magazines for advertising the assessee's business and the printing of other material for conveying the information to its clients and prospective customers. The Tribunal returned a finding that by spending money for its website, the assessee could not be considered to have acquired any capital asset even if such a website provided an enduring benefit to the assessee. Consequently, the Tribunal took the view that the expenditure for the acquisition and upgradation of the website was of a revenue nature.

4. The Tribunal placed reliance on two decisions of the Supreme Court in the cases of *Empire Jute Company Ltd v. CIT: 124 ITR 01* and *Alembic Chemical Works Company Ltd v. CIT: 177 ITR 377.*



5. In *Empire Jute Company Ltd* (supra), the Supreme Court observed that if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The Supreme Court observed that in such cases the test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.

6. In *Alembic Chemical Works Company Ltd* (supra), the Supreme Court observed that the idea of "once for all" payment and "enduring benefit" are not to be treated as something akin to statutory conditions: nor are the notions of "capital" or "revenue" a judicial fetish. The Supreme Court also observed that the "once for all" payment test is also inconclusive. What is relevant is the purpose of the outlay and its intended object and effect, considered in a commonsense way having regard to the business realities. The



Supreme Court also noted that in a given case, the test of “end benefit” might break down.


7. Considered in the light of these principles enunciated by the Supreme Court, it is clear that just because a particular expenditure may result in an enduring benefit would not make such an expenditure of a capital nature. What is to be seen is what is the real intent and purpose of the expenditure and as to whether there is any accretion to the fixed capital of the assessee. In the case of expenditure on a website, there is no change in the fixed capital of the assessee. Although the website may provide an enduring benefit to an assessee, the intent and purpose behind the purpose for a website is not to create an asset but only to provide a means for disseminating the information about the assessee. The same could very well have been achieved and, indeed, in the past, it was achieved by printing travel brochures and other published materials and pamphlets. The advance of technology and the wide spread use of the internet has provided a very powerful medium to companies to publicize their activities to a larger spectrum of people at a much lower cost. Websites enable companies to do what the printed brochures did but, in a much more efficient manner as well as in a



much shorter period of time and covering a much larger s
people worldwide.

8. The Tribunal has correctly appreciated the facts as well as the law on the subject and has come to the conclusion that the expenditure on the website was of a revenue nature and not of a capital nature. We see no reason to interfere with the impugned order. No such substantial question of law arises for our consideration. The appeal is dismissed.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

September 05, 2008
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