



* IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 79 of 2008

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Decided On: 3rd August, 2009.

COMMISSIONER OF INCOME TAX, DELHI II . . . Appellant
through : Mr. N.P. Sahini with Mr. P.C. Yadav,
Advocates.

VERSUS

LEO FINANCIAL SERVICES LTD. . . . Respondent
through: Mr. K. Sampath and Mr. S. Krishnan,
Advocates.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The assessee had filed the return for the Assessment Year 2001-02. While assessing the income, the Assessing Officer made additions on account of disallowance of proportionate expenses pertaining to the earning of the dividend income not included in the taxable income and on account of expenses. The CIT(A) reversed this and deleted the aforesaid additions and restricted the addition to Rs.2,00,000/- on



account of expenditure attributable to the earning of dividend inc

While doing so, the CIT(A) referred to the principles laid down by the Supreme Court in the case of *Rajasthan State Warehousing Corporation Vs. Commissioner of Income Tax*, 242 ITR 450 and *inter alia* observed as under:

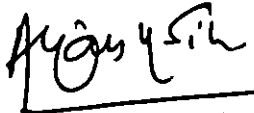
“In computing ‘profits and business or profession’ when an assessee is carrying on business in various ventures and same among the yield taxable income and the others do not, the question of allowabilities of the expenditure under Section 37 will depend on: (a) fulfillment of requirements of that provision; (b) on the fact whether all the ventures carried on by him constitute one indivisible business or not; if they do, the entire expenditure will be a permissible deduction but if they do not, the principle of apportionment of the expenditure will apply because there will be no nexus between the expenditure attributable to the venture not forming integral part of the business and the expenditure sought to be deducted as the business expenditure of the assessee.”

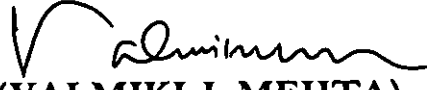
2. The CIT(A), after considering the facts of the present case including the nature of income and normal course of commercial activities came to the conclusion that an addition of Rs.2,00,000/- would be a fair estimate of the expenditure attributable to the earning of the dividend income on proportionate basis. This finding of the CIT(A) has been upheld by the Income Tax Appellate Tribunal in the following manner:



“On going through the entire material and the facts considered by the learned CIT(A), we find no scope to interfere with his findings and uphold her view inasmuch as the Assessing Officer had not given any cogent reason for allocating the expenditure of Rs.1,14,56,605/- which the learned CIT(A) properly considered. The contention of the Revenue that out of the total expenditure of Rs.1,99,99,981/- debited to the profit & loss account, substantial portion of the expenditure attributable to the earning of dividend income has not been substantiated before us. In our considered opinion the approach adopted by the learned CIT(A) cannot be treated to be unreasonable or unfair. We, therefore, reject the grounds taken by the Revenue and uphold the order of the learned CIT(A).”

3. The aforesaid question is a pure question of fact and no substantial question of law arises. Similar view has been taken by this Court in the case of *CIT Vs. Chemical & Metallurgical Design Co. Ltd.* in ITA No. 803/2008 in its order dated 15.07.2008.
4. We, therefore, dismiss the appeal.


(A.K. SIKRI)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

August 03, 2009.
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