



* IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 758 of 2008

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Decided on: 25.08. 2009.

COMMISSIONER OF INCOME TAX . . . Appellant
through: Ms. P.L. Bansal with Ms. Anshul
Sharma and Mr. Paras Chaudhary,
Advocates for the appellant.

VERSUS

HONDA SIEL POWER PRODUCTS LTD. . . . Respondent
through: Mr. Ajay Vohra with Ms. Kavita Jha, Ms.
Akansha Aggarwal and Mr. Sriram
Krishna, Advocates for the respondent.

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. This appeal was admitted on the following question of law:

"Whether ITAT was correct in law in allowing a sum of Rs.32,77,592/- to the assessee being expenditure incurred in relation to new plant being set up at Noida under Section 37(1) of the Act?"

2. Before we answer to this question of law, it would be necessary to take note of the relevant facts. In the Income Tax return filed by the



incurred revenue expenditure to the tune of Rs.32,77,592/-, which related to a new Pressure Die Casting Plant being set up at Noida. The assessee had submitted before the Assessing Officer that in connection with manufacture of portable generator sets, the assessee was required to procure certain aluminium die cast components from outside vendors. In order to overcome the problems of irregular supplies and inconsistent quality, the assessee decided to set up its own pressure die casting plant and during the year had incurred expenditure of Rs.32,77,592/- on salaries, rent travelling, etc. in relation to this project. It was also submitted that the new project was an extension of the existing business and there was complete unity of control, common management and funds as well as interlacing of the business. The assessee had not taken any loan and the entire payment had been made from the common funds.

3. The Assessing Officer (AO), however, noted from the Director's report that the new plant commenced production only in the next year and in addition to meeting the captive requirement, it was also supplying some critical parts to an associate company. The Assessing Officer accordingly held that the new plant was not merely a captive plant or a measure of backward integration, but it was a distinct and new unit having capacity to undertake business on its



4. Aggrieved by this order, the assessee filed the appeal before the CIT(A). We may note at this stage itself that apart from the aforesaid expenditure, which was disallowed, there was certain other claims of the assess disallowed by the AO, which was also the subject matter of the appeal before the CIT(A) as well as ITAT. However, since we are not concerned with any other issue, it is not necessary to delve into this issue and the facts which are taken note of are confined to the aforesaid claim. The CIT(A) accepted the plea of the assessee and setting aside the order of the AO on this ground, allowed the aforesaid expenditure as revenue expenditure. The Department preferred appeal against this part of the order of the CIT(A) before the Tribunal and the Tribunal has upheld the order of the CIT(A).

5. In these circumstances, further appeal before us is filed under Section 260A of the Income Tax Act, 1961. At this stage, we would like to reproduce the detailed analysis as discussed by the Tribunal, which not only deals with the various components of the aforesaid expenditure, but also the nature of the expenditure incurred:

"3.3.4 We have perused the records and considered the rival contentions carefully. The assessee is in the business of manufacture of portable generator sets. For this purpose, the assessee was procuring aluminium die cast components, which were used in the process of manufacture, from outside vendors. In order to overcome the problem of irregular supplies and inconsistent quality of components, the assessee during the year



the revenue expenditure on the ground that the new project was part of the same business as a measure of backward integration. The Assessing Officer disallowed the same as a capital expenditure holding that the new plant was an independent unit, which was also supplying some of its parts to other concerns. The CIT(A) held that the new project was a part of the existing business as there was unity of control, common management, common funds and interlacing of two businesses, following the judgment of Hon'ble High Court of Delhi in case of Modi Industries (200 ITR 341) and the judgment of Hon'ble High Court of Bombay in case of Tata Chemicals (256 ITR 395). Hon'ble High Court of Delhi in case of Mondri Industries (supra) following the judgment of Hon'ble Supreme Court in case of Prithvi Insurance Co. (63 ITR 632) have held that in considering whether two businesses run by the assessee are the same business, what is of importance is unity of control and interlacing of two businesses and not the nature of business.

xxx... Now the only thing to be decided is whether the expenses incurred during the year on salaries, rent, travelling, etc. in relation to the new project, which is nothing but a part of the same business can be allowed as revenue expenditure. The new project is for manufacture of raw material to be used in the existing business and therefore, the new project will definitely help the existing business to be carried on more efficiently and profitably as smooth supply of quality raw material can be ensured. The nature of expenditure incurred is also not such which results in creation of any enduring assets. A similar situation had been considered by the Hon'ble High Court of Delhi in case of Usha Iron and Ferro Metals Corpn. Ltd. (166 Taxman 256) in which case also the assessee a manufacturer of different types of rods had decided to set up steel melting shop for manufacture of raw material on its own. The expenses incurred in connection with the new unit had been allowed by the Hon'ble High Court as revenue expenditure after observing that manufacture of raw material was for improving of the existing business and it did not amount to setting up of a new business."

6. From the aforesaid discussion, the following aspects emerge:
 - a) The expenditure in question was incurred of salaries, rent, travelling, etc. in relation to the project in question.



- b) The new project was a part of the existing business, as there was unity of control, common management and funds as well as interlacing of the two businesses.
- c) New project was the expansion or the extension of existing business and not a new business.
- d) The nature of expenditure, viz., salaries, rent, travelling, etc., was otherwise a kind of revenue expenditure. The nature of expenditure incurred is also not such, which results in creation of any enduring assets.
7. On this finding of facts, we are of the opinion that the learned Tribunal rightly relied upon the judgments of this Court and the Supreme Court to arrive at a finding that the expenditure in question was allowable as revenue expenditure. This Court had occasion to deal with an identical issue in ITA No. 145/2007 in the case of *Commissioner of Income Tax, Delhi-V Vs. Priya Village Roadshows Ltd.* in its judgment dated 24.08.2009 rendered in the said case. This Court took its two earlier judgments in the case of *Triveni Engineering Works Ltd. Vs. Commissioner of Income Tax*, (1998) 232 ITR 639 (Delhi) and *Commissioner of Income Tax Vs. Modi Industries*, 200 ITR 341. After discussing both the cases, the Court pointed out the ratio of the two judgments in the following manner:



demonstrate that one has to keep in mind the essential purpose for which such an expenditure is incurred. If the expenditure is incurred for starting new business which was not carried out by the assessee earlier, then such expenditure is held to be of capital nature. In that event it would be irrelevant as to whether project really materialized or not. However, if the expenditure incurred is in respect of the same business which is already carried on by the assessee, even if it is for the expansion of the business, namely, to start new unit which is same as earlier business and there is unity of control and a common fund, then such an expense is to be treated as business expenditure. In such a case whether new business/asset comes into existence or not would become a relevant factor. If there is no creation of new asset, then the expenditure incurred would be of revenue nature. However, if the new asset comes into existence which is of enduring benefit, then such expenditure would be of capital nature.

11. When we keep in mind the aforesaid fine distinction, the conclusion on the facts of this case becomes obvious. The expenditure was incurred in respect of same business which is already carried on by the assessee. Two projects which were undertaken were for the expansion of same business, namely, one for taking over Savitri Cinema for conversion into multiplex and operation and management thereof and other for conversion of Priya Cinema into four-screen multiplex. Payments were made to the consultants for preparing feasibility reports in respect of both the projects. However, ultimately projects were not found to be financially and technically viable and were shelved. Thus, we find that no new asset came into existence, which was the basis adopted by the Assessing Officer for treating the expenditure as capital expenditure but wrongly.

12. In the present case both the ingredients are satisfied, namely,

- i. the feasibility study conducted by the assessee was for the same and existing business with a common administration and common fund and,
- ii. the study was abandoned, without creating any new asset.

13. We note two judgments of other High Courts taking this view in identical circumstances. One case is decided by Gauhati High Court which is reported as Dy. CIT v. Assam Asbestos Ltd., 263 ITR 357. In that case the assessee was in the business of manufacturing asbestos sheets. Contemplating to set up a mini cement plant, which was the same line of business



no new capital asset came into existence and the expenses incurred on preparation of the feasibility report, same line of business, were in the nature of revenue expenditure. Rajasthan High Court had also occasion to deal with this issue in the case of *Maharaja Shri Umaid Mills Ltd. v. CIT*, 175 ITR 73. There also the expenditure incurred in obtaining survey and feasibility report for setting up polyethylene plant for manufacturing packing material was treated as revenue expenditure as the new venture was inter-connected and formed part of existing business."

7. In the present case also, ingredients of treating the expenditure as revenue are satisfied. We are, therefore, answering to the question in favour of the assessee and against the revenue. This appeal is accordingly dismissed.


(A.K. SIKRI)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

August 25, 2009.

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