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Present: Ms. Prem Lata Bansal, Senior Standing for the appellant.

+I.T.A. No. 702/2009

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Assessee, namely, Airport Authority of India in its income tax returns filed for the assessment year 2002-03 had shown salary paid to certain staff as revenue expenditure. This staff was earlier engaged on certain projects. In this year, however, as per the assessee there were no major projects with the assessee and therefore staff was engaged in day to day maintenance and repairs. From the order of the Income Tax Administrative Tribunal, it is clear that such facts were not even disputed by the revenue.

Thus, on the basis of admitted facts, finding is arrived at that since the staff in question which is paid salary is utilized in day to day repairs and maintenance work at Airports, the salaries paid to them is to be treated as revenue expenditure. This is a finding and it cannot be disputed that the salary paid to the staff in the aforesaid circumstances would be a revenue expenditure.



We may reproduce the following portion of the judgment of

ITAT:

“Learned counsel for the assessee reiterated its stand that it has not been disputed that the engineering and other staff of project division has been utilized in day to day repairs and maintenance work at Airport. If this staff was not deployed in day to day repairs and maintenance work, they would have been sitting idle and the assessee would have to employ some quantity of labour by out sourcing. The assessee is a PSU and merely because the staff belonged to project division will not make their work, which is an day to day maintenance, to be capital in nature, merely because of the apparent department to which they belong. It is also a fact that the assessee’s contention that the staff was deployed in day to day repairs and maintenance work at Airport, has not been disputed. In view of these facts, since there was no new major project since last five years, the assessee had changed its accounting policy which is in accordance with the Institute guidelines and have been endorsed by the CA. There is no scope to hold the expenses to be capital in nature.

Learned DR relied on the orders of the lower authorities.

We have heard rival submissions of the parties and carefully considered the relevant material on record. As the facts emerge, following facts have not been disputed:

- (i) There was no new major project in the past few years:
- (ii) The engineering and other staff in question has been utilized in day to day repairs and maintenance work at Airport as Airports.
- (iii) The change in policy has been duly recognized and endorsed by the auditors.



The assessee is a PSU and the staff's mobilization is in public interest. In view of these facts, merely because the staff pertained to project division, will not make the revenue expenditure as capital in nature. In view thereof, we hold that since the engineering and other staff in question has been utilized in day to day repairs and maintenance work at Airport, the same has to be allowed as revenue expenditure. Therefore, we reverse the orders of lower authorities and allow the assessee's claim Ground is allowed."

We, thus, find that the present appeal is totally misconceived and is a misuse and abuse of the process of law. It gives an impression that the authorities have become totally oblivious to the requirement of Section 260 (A) of the I.T. Act and are indiscriminately filing appeals. In this present case, even when aforesaid explanation was given by the authority which is a public sector undertaking and was not even disputed before ITAT appeal has been filed and that too when approval of the COD has also been awaited. Be that as it may be, as we find that the appeal is totally frivolous, we dismiss the same with costs of Rs. 25,000/- to be paid to the Delhi High court Mediation and Conciliation Centre.


A.K.SIKRI, J


VALMIKI J. MEHTA, J

July 13, 2009
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