



\* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on : 12<sup>th</sup> August, 2010  
 Judgment Pronounced on: 13<sup>th</sup> September, 2010

+ ITA No.1163/2010

CIT ..... Appellant  
 Through Ms. Suruchi Aggarwal, Adv.

versus

AGRICULTURAL PRODUCE  
 MARKETING COMMITTEE ..... Respondent  
 Through Ms. Avnish Ahlawat, Adv.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE MANMOHAN**

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

**DIPAK MISRA, CJ**

The present appeal preferred under Section 260A of the Income Tax Act (for brevity 'the Act') against the order dated 22<sup>nd</sup> December, 2009 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F' Delhi (for short 'the tribunal') in ITA No.3704/Del/2009 pertaining to the assessment years 2003-04 was admitted on the following substantial question of law:-

1. Whether the expenses incurred by the assessee towards erection of boundary walls, construction of tanks, construction of roads etc. under the nomenclature Maintenance of market yard (Civil) and Maintenance of market yard (Electric) are to be treated as Capital or Revenue?



2. At the very outset, we may note that in the memorandum of appeal, a large number of substantial questions were raised but at the time of admission, the learned counsel for the revenue as well as the assessee fairly conceded that the only question that really survived for adjudication in this appeal is the question that has been framed. Thus, we shall filter the facts from the orders relating to the said facet only. The assessee namely, M/s Agriculture Produce Marketing Committee, filed its return for the relevant assessment year declaring the total income as nil. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) along with a detailed questionnaire were issued which were duly served on the assessee. From the books of account, it was noticed by the assessing officer that the expenses relating to maintenance of market yard (civil) amounting to Rs.1,75,21,608/- and maintenance of market yard (electrical) amounting to Rs.69,48,683/- were capital in nature and, accordingly, he held that the assessee had created assets which would give benefit that would be enduring in nature. The said order dated 22<sup>nd</sup> March, 2004 was challenged before the CIT(A) and the first appellate authority came to hold that the expenditure to the extent of Rs.86,04,618/- was in the nature of revenue expenditure and, accordingly, deleted the addition to that extent. Being grieved by the aforesaid order, the assessee as well as the revenue preferred appeals before the tribunal. Before the tribunal, it was contended by the assessee that the CIT(A) was not justified in disallowing part of the expenses incurred on the maintenance of market yard (civil) being capital in nature whereas the assessee had debited the same in the Income & Expenditure account as the expenses were revenue



in nature and were recurring expenses; that the first appellate authority .....  
not correct in disallowing part of the expenses incurred on the maintenance of market yard (Electrical) being capital in nature whereas the assessee had debited the same in the Income & Expenditure account as the expenses were revenue in nature and were recurring expense.

3. At this juncture, we may refer to the view expressed by the CIT(A) which reads as under:-

“B.4 In the light of the above principles the nature of expenditure incurred by the appellant is examined and the following items of expenditure to the extent of Rs.86,04,618/- are held to be revenue in nature:-

- (i) Major repair of road (exit gate NSM) –  
Rs.2,74,253/- +Rs.9,55,579/- + Rs.2,01,135/- +  
Rs.76,618/- = Rs.15,07,585/-
- (ii) Major repair of footpath (D-Block NSM) –  
Rs.2,22,765/- + Rs.6,99,739/- + 9,22,504/-
- (iii) Improvement work of the market RCC UG Tank –  
Rs.2,82,383/-
- (i) Major repair of boundary wall at Okhla sub yard –  
Rs.2,57,727/-
- (ii) Major Repair of Okhla Sub yard NSM –  
Rs.4,51,342/-
- (iii) Improvement of sewerage of and storm water drain  
NSM- Rs.10,64,382/-
- (iv) Major repair of NSM Shed B&D Blocks –  
Rs.7,59,918/-
- (v) Improvement of water line work (NFM & NSM) –  
Rs.16,48,368/-

B.5 On the basis of the above discussion and taking into consideration the totality of the facts and circumstances of the instant case, it is held that the expenditure amounting to Rs.71,24,217/- is of capital nature. The break-up of such



expenditure is as under:-

- (a) Erecting permanent corrugated fiber sheet at the roof of overload ventilation at POMA – Rs.1,63,825/-
- (b) Extension of sheds (NFM) – Rs.6,04,755/-
- (c) Erection of boundary wall at NFM – rs. 3,38,204/-
- (d) Installation of conveyer belt system – Rs.1,15,507/-
- (e) Construction of steps at Okhla Mandi – Rs.1,90,805/-
- (f) Construction of wall (Tickery Khanpur) – Rs.2,73,783/-
- (g) Raising of boundary wall Okhla sub yard – Rs.5,23,806/-
- (h) Construction of pathways boundary wall at NFM – Rs.22,945/-
- (i) Construction of pathways boundary wall platform for erecting the statue of Ch. Hira Singh – Rs.9,20,348/- + Rs.1,52,964/- = Rs.10,73,312/-
- (j) Renovation of SE office – Rs.1,15,016/-
- (k) Fixing statue of Ch. Hira Singh at NFM – Rs.13,40,144/-
- (l) Raising of boundary wall at NSM – Rs.191,055/-
- (m) Construction of boundary wall at POMA shed NSM – Rs.4,42,595/-
- (n) Installation of tube wells at NSM & NFM –Rs.6,34,392/-
- (o) Construction of sewerage lane at NSM – Rs.4,77,033/-
- (p) Electrical expenses on market yard – Rs.6,17,040/-”

4. To arrive at the aforesaid conclusion, the CIT(A) has placed reliance on ***Ballimal Naval Kishore v. CIT***, (1997) 224 ITR 414 (SC), ***SENAPATHY Synams Insulations (P) Ltd. v. CIT***, (2001) 248 ITR 656 (Kar.) and ***CIT v. Norht Dhemo Coal Co. Ltd.***, (1977) 106 ITR 592 (Cal.).



5. The tribunal, after referring to the submissions, has held as follows ..

“10. Learned counsel for the assessee in reply contends that the assessee incurs expenditure under various heads as it has to take care of so many marketing yards. The same includes repairing of roads, repairing of footpaths, repairs of boundary wall, sewerage, streets, sheds and water supply. Since the assessee earns income by making available these facilities it is obligatory to keep all these facilities in good and proper condition so as to enable the farmers, traders, to carry out their activities in an efficient manner. Therefore, these expenses are purely revenue in nature and CIT(Appeals) has rightly held so. Our attention was invited to various observations and case laws relied on by the CIT(Appeals).

11. We have heard the rival contentions and perused the material on record. Apropos revenue's appeals, we find that the CIT(Appeals) has considered all the details of expenditure and has listed out all the items of expenses allowed as revenue, some of which are as under:

- (i) Major repair of road (exit gate NSM);
- (ii) Major repair of footpath (D-Block NSM)
- (iii) Improvement work of the market RCC UG Tank
- (iv) Major repair of boundary wall at Okhla sub yard
- (v) Major repair of Okhla Sub Yard and NSM
- (vi) Improvement of sewerage and Storm water drain (NSM)
- (vii) Major repair of street at NSM A- Block
- (viii) Improvement of water line work (NFM & NSM)

The expenditure incurred for respective year is listed in the CIT(Appeals)'s order. In our considered view, all these expenses are revenue in nature and we find no infirmity in the orders of CIT(Appeals) alongwith these expenses being revenue in nature, consequently revenue's ground in this behalf are dismissed.”



6. In view of the aforesaid factual analysis made by the tribuna -----  
regard being had to the facts which are borne out on record, we are of the  
considered opinion that the expenditure is absolutely in the realm of revenue  
expenditure as there has been no construction which has enduring benefit to  
the assessee. It is also difficult to say that the repairs carried out have any  
enduring benefit to the expanding assets. The same is recurring in nature  
and the assessee, the Agricultural Produce Marketing Committee, is required  
to do the same to carry out the business. Looking at the expenses made, we  
have no trace of doubt that the finding recorded by the tribunal is absolutely  
correct. Thus, in our considered opinion, no substantial question of law  
arises in this appeal.

7. In the result, the appeal, being devoid of merit, stands dismissed  
without any order as to costs.

**CHIEF JUSTICE**

**MANMOHAN, J**

SEPTEMBER 13, 2010

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