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% 19.09.2011

Present: Mr. Kamal Sawhney, Senior Standing Counsel with  
Mr. Amit Srivastava, Advocate for the Appellant.  
Mr. Salil Kapoor, Advocate with Mr. Sanat Kapoor  
and Mr. Tashriq Ahmad, Advocates for the  
Respondent.

+ CM 17032/2011 (exemption) in ITA 1092/2011

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Allowed subject to all just exceptions.

Application stands disposed of.

CM 17033/2011 (delay) in ITA 1092/2011

For the reasons stated in the application, the delay in  
filing the appeal is condoned.

The application stands disposed of.

ITA 1092/2011

During the assessment proceedings, the Assessing Officer  
found that the assessee had incurred the expenditure of  
₹93,91,706/- debited in the Profit and Loss Account as severance  
cost of employees. Likewise, another expenditure on marketing  
and research in the sum of ₹29,14,242/- was shown to be  
incurred by the assessee. The Assessing Officer had taken the  
whole expenditure as capital in nature and disallowed the same.

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The assessee preferred appeal thereagainst. CIT(A) upheld the disallowance made by the Assessing Officer on account of severance cost of employees, however, expenses shown on market and research expenses was allowed treating the same as revenue in nature. Both the assessee as well as revenue preferred appeals against the aforesaid order of CIT(A). The ITAT has allowed the appeal of the assessee and dismissed that of the revenue. It is under these circumstances, present appeal is filed challenging the order passed by the Assessing Officer.

Insofar as, severance cost of employees is concerned, it may be noted that the assessee-company had started manufacturing of powdered soft drink in the name and style of "Tang". However, during the year in question they decided to stop its manufacturing activity as it was found to be non-profitable. Because of this, many employees who were directly in this manufacturing activity were laid off and the severance cost to those employees in the sum of ₹93,91,706/- was paid. The Assessing Officer had treated it as a closure of business of the assessee and on that basis he opined that the expenditure

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incurred was capital in nature. The ITAT has, however, recorded finding of facts that the assessee was into more than one business activities namely apart from manufacturing aforesaid powdered soft drink under the name and style of "Tang", the assessee was also trading in soft drinks. Suspension of one of the activities, therefore, did not amount to closure of business of the assessee. It is also found that despite that turnover of the assessee in the assessment year 2005-06 became nil because of the stoppage in the manufacturing activity. However, in the assessment year 2006-07 it again raises to ₹3,02,15,240/- which further appears to be more than ₹15 Crores in the assessment year 2007-2008. This clearly indicated that the manufacturing activity in the year in question was simply suspended and the said manufacturing of powdered soft drink could not be construed as single activity.

The Tribunal further relied upon the judgment of Supreme Court in the case of ***Narayan Swadesh*** -vs- ***CIT, 26 ITR 765*** wherein the Supreme Court defined the expression "business" and held that business connotes some real substantial systemic and organized course of activity or a conduct with a set purpose.



In the present case, since the assessee had been doing other business activity also namely "trading", it could not be said that the assessee had closed its business with the suspension of manufacturing powdered soft drinks. We are quite in agreement with the orders of the Tribunal. No substantial question of law arises.

The Appeal is dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

September 19, 2011  
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