



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 318/2012

COMMISSIONER OF INCOME TAX - II Appellant
Through Mr. N.P. Sahni, Sr. Standing Counsel.

versus

MANUPATRA INFORMATION SOLUTIONS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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28.05.2012

Commissioner of Income Tax-II has filed this appeal assailing the order dated 30th September, 2011 passed by the Income Tax Appellate Tribunal (for short, the tribunal) in two cross appeals relating to the assessment year 2006-07 in the case of Manupatra Information Solutions Pvt. Ltd.

2. Learned counsel for the Revenue submits that the tribunal has erred in relying upon the decision of the High Court in *CIT Vs. Indian Visit.Com Pvt. Ltd.* 176 Taxman 164. He states that the said decision relates to a website, which was created by the assessee therein, who was engaged in travel business. Through the website, internet users had access to the business of the assessee and could make booking for

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hotel rooms, taxi services, air ticketing etc.

3. In the present case, the respondent-assessee is providing legal software and has data base of legal judgments and articles. These judgments/articles can be used as a software in media or can be accessed from the server as a website on payment of charges to the respondent-assessee.

4. The Assessing Officer in the assessment order dated 19th December, 2008 observed that the assessee had amortized the expenditure incurred on data base and development cost in the books of accounts, but for the income tax purpose had claimed the same as a revenue expense. He held that the said expense cannot be allowed in one year, as it would give a very distorted picture of the profits of a particular year. For the sake of completeness, we are reproducing the exact reasoning given by the Assessing Officer:-

“As seen from the above, the benefit of the above expenditure claimed by the assessee is for number of years and accordingly amortized as per the books. Hence the claim of above expenditure in full for the income tax purpose cannot be allowed.

The submissions filed by the assessee company were considered and cannot be accepted. The Hon'ble Supreme Court in the case of **Madras Industrial Investment Corporation Ltd. Vs. Commissioner of Income Tax (255 ITR 802)** held that the allowability of the expenditure depends entirely on the nature of the expenses and stated that allowing



the entire expenditure in one year might give a very distorted picture of the profits of a particular year. It had further stated that although the assessee incurred the entire liability in the current year, if the nature of expense is such that the benefit is for a number of years to the assessee company the huge expenditure incurred cannot be held exclusively for the current year.”

5. In the first appeal, the assessee partly succeeded as the Commissioner Income Tax (Appeals) held that the assessee was entitled to depreciation @ 25% and accordingly relief to the extent of Rs.15,43,618/- was granted (there appears to be some error in the order of the CIT (Appeals) as he has wrongly calculated the relief in the last but one sentence). The CIT (Appeals) while substantially dismissing the appeal gave the following reasoning:-

“4.3 Before proceeding to deal with the issue, it is essential to understand the business activities of the appellant. The company runs a web site on which legal decision of various courts, information including statutes etc. is available on line on the click of a button. The access to the web site is limited to the persons who have paid the necessary fees to be entitled to do so for a fixed period of time upon the expiry of which the period can be extended for a further limited duration. Such persons (subscribers) are issued a password to access the web site. Once the web site is accessed, whole lot of information in the form of court decisions, statutes, various regulations, news bulletin etc. is available. Thus, the data once created and placed on the net is available



for all the times to come unless withdrawn/removed by the site owner. In this case, the appellant. The said data once created is permanent and is only required to be updated thereafter.

4.4. it is seen that the expenditure under the head data base and development cost has been incurred to create data base which includes decision of various courts including Supreme Court and High Courts, their head notes/case notes, parallel citations etc. It is also seen that the said expenditure has been incurred by the appellant for procuring various decisions, citing references, quality checks, for books and periodicals and also as remuneration to editors/employees. Some of the heads of the said expenditure when seen in isolation may or may not appeal capital in nature but when they are seen in totality in conjunction with the object of incurring them or the end product which is generated, one can come to know about their nature. The expenditure so incurred has resulted into the creation of a data base, the benefits of which the appellant is going to enjoy for all the times in future once the same comes into the existence. Therefore, the said data base is nothing but a capital assets of the appellant as the said expenditure has resulted into an enhancement to the capacity of the income generating instrument in its hands. Since the expenditure has resulted into the creation of a capital asset, the same cannot be treated as a revenue expenditure but is actually a capital expenditure.”

6. Before the CIT (Appeals), the assessee had filed written submissions, which were taken on record and mentioned in the order.

In the written submissions the assessee had stated as under:-



Deferred Expenditure in the books of account, for the shareholders. A portion of such expenditure had been written off during the year under consideration. However such amount written off has been disallowed in the computation of income. The entire business expenditure on Database & Development incurred during the year had been claimed as deduction in the computation of income. 1

7. It is clear from the written submissions that the assessee is in the business of providing legal software, which can be accessed from the website on payment of charges. Anyone familiar with legal software, knows that the said software requires constant up-gradation on day to day basis. Judgments and articles have to be uploaded and updated. The judgments require preparation of head notes, summaries, references, etc. For both uploading judgments and articles and preparation of head notes etc. expenditure has to be incurred virtually every day. The said expenses are certainly business expenses and will fall in the category of "revenue expenditure". This is what has been highlighted and pointed out in the written submissions, which have been reproduced by the first appellate authority. In case legal software is not updated or latest judgments and articles are not available, the service provider runs the risk of losing business to others. The software has value only if it is accurate and updated regularly. Old software has no value and takers in the market.



“Database and Development cost are incurred on a day to day basis on expenditure like salary, printing, commission and other expenditure on establishment. These expenses are only revenue in nature and having been incurred in furtherance of business, and need to be allowed in their entirety.

Appellant company has to continuously update and expand content and provide online services on a real time basis. Assessee company has continued to expand content and online services and is also adding value enhancements to its online library, thereby increasing the scope of its content horizontally and vertically.

Appellant company have expended the coverage of judgments of High Courts and Supreme Court, which was used by lawyers and other professional to get relevant information/judgments and increasing their productivity so that they, in turn can deliver better services to their customers.

Reporters of appellant company attached to various courts have to make continued efforts to collect various information and landmark judgments from Supreme/High Courts. These judgments are then to be processed for making it usable for digital/online content usage. Assessee company has also incur cost on the development, editing, indexing summarizing and linking of data.

In a new/ever growing business, results in terms of revenue grow at a slow pace. However costs are to be incurred to get the business moving and attracting customers by exhibiting to customer the value of an appellant’s products.

Following the accounting policy, certain expenditure on Database & Development Cost was treated as



8. In these circumstances, we do not think that in absence of the material to the contrary, the Assessing Officer and the CIT (Appeals) were justified in holding and observing that the expenditure incurred was capital expense and not revenue expense. The Assessing Officer and the CIT (Appeals) have not recorded any special feature or justification to hold that the expenditure was capital in nature. It is not alleged or averred that the expense incurred was the initial expenditure by the assessee when it started the business and created the first version/copy of software with the earlier decisions/judgments.

9. The tribunal in the impugned order has referred to the judgment of this Court in *Indian Visit.Com Pvt. Ltd (supra)*. In the said case, as noticed above, the assessee was in travel business and had created a website for prospective customers. The assessee therein obviously was in existing business and to improve the business and turnover, it had setup a website. In the said judgment, reference was made to the decisions of the Supreme Court in *Alembic Chemical Works Company Ltd. Vs. CIT 177 ITR 377* and *Empire Jute Company Ltd. Vs. CIT 124 ITR 01* and it was observed as under:-

5. In *Empire Jute Company Ltd (supra)*, the Supreme Court observed that if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the



expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The Supreme Court observed that in such cases the test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.

6. In Alembic Chemical Works Company Ltd (supra), the Supreme Court observed that the idea of 'once for all' payment and 'enduring benefit' are not to be treated as something akin to statutory conditions: nor are the notions of "capital" or "revenue" a judicial fetish. The Supreme Court also observed that the "once for all" payment test is also inconclusive. What is relevant is the purpose of the outlay and its intended object and effect, considered in a commonsense way having regard to the business realities. The Supreme Court also noted that in a given case, the test of 'enduring benefit' might break down.

7. Considered in the light of these principles enunciated by the Supreme Court, it is clear that just because a particular expenditure may result in an enduring benefit would not make such an expenditure of a capital nature. What is to be seen is what is the real intent and purpose of the expenditure and as to whether there is any accretion to the fixed capital of the assessee. In the case of expenditure on a website, there is no change in the fixed capital of the assessee. Although the website may provide an enduring benefit to an assessee, the intent and purpose behind the purpose for a website is not to create an asset but only to provide a means for disseminating the information about the assessee. The same could very well have been achieved and, indeed, in the past, it was achieved by printing travel brochures and other published materials and pamphlets. The advance of technology and the wide spread use of the internet has provided a very powerful medium to companies to publicize their activities to a larger spectrum of people at a much lower cost. Websites enable companies to do what the printed brochures did but, in a much more efficient manner as well as in a much shorter period of time and covering a much larger set of people worldwide."

10. We have noticed the factual difference, but the legal principle

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and issue involved to determine and decide whether an expenditure incurred is capital expenditure or a revenue expenditure, have been rightly noticed and elucidated in the said decision. We may note that expenses in respect of software up-gradation in the form of the better or more exhaustive search engine, up-gradation in the source software, features offered etc have to be incurred from time to time to remain competitive in business. Software improvement is a constant process and expenditure has to be incurred repeatedly. We do not agree that the software up-gradation expenses in the present case should be treated as a capital expense. The Assessing Officer and the first appellate authority have failed to bring on record necessary features, facets or factual matrix to justify the claim that the expenditure was capital in nature. The factual assertions made by the assessee have not been controverted or denied.

11. In view of the aforesaid position, we do not think that any substantial question of law arises in this appeal and the same is dismissed.

SANJIV KHANNA, J.**R.V.EASWAR, J.****MAY 28, 2012****NA**

ITA 318/2012