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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ ITA 434/2013

COMMISSIONER OF INCOME TAX-IV ..... Appellant  
Through: Mr.Kamal Sawhney, Advocate

versus

M/S H T MUSIC & ENTERTAINMENT CO LTD ..... Respondent  
Through: Nemo.

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+ ITA 435/2013

COMMISSIONER OF INCOME TAX IV ..... Appellant  
Through: Mr.Kamal Sawhney, Advocate

versus

M/S H T MUSIC & ENTERTAINMENT CO LTD ..... Respondent  
Through: Mr.V.P.Gupta, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**ORDER**

**% 25.09.2013**

**CM No.14054/2013 (exemption) in ITA 435/2013**

Exemption allowed, subject to all just exceptions.

**CM No.14053/2013 (delay) in ITA 434/2013**

**CM No.14055/2013 ( delay) in ITA 435/2013**

There is delay of 65 days and 117 days in refiling of the appeals.

For the reasons stated in the applications, the delay in filing and refiling the appeal is condoned.

The applications stand disposed of.



### ITA434/2013 and ITA 435/2013

These two appeals by the revenue under Section 260A of the Income Tax Act relate to assessment years 2007-08 and 2008-09.

Two common issues are raised in these two appeals. The first common issue relates to expenditure incurred on training of staff. The contention of the revenue is that this was capital expenditure. The contention cannot be accepted as the employees were not a capital asset or fixed asset of a company. Employees were trained for greater efficiency and superior performance. But this cannot be a ground to hold that the assessee company had incurred capital expenditure or that they had derived enduring benefit. Employees undergo training for their skill improvements, which may and should in turn result in better efficiency and increased productivity. Nevertheless, it is incorrect to assume that every expenditure that may increase productivity or enhance profits must be capital expenditure. Better or improved skills and knowledge, is personal to an employee. It does not add to the profit making apparatus or structure and is not acquisition of a source of profit. Employee is entitled to change his employer and move on. The following observations in *Empire Jute Company v. Commissioner of Income Tax*; (1980) 124 ITR 0001(SC) are apposite and illustrate the principle of law applicable:-

“The revenue, however, contended that by purchase of loom hours the assessee acquired a right to produce more than what it otherwise would have been entitled to do and this right to produce additional quantity of goods constituted addition to or augmentation of its profit-making structure. The assessee acquired



the right to produce a larger quantity of goods and to earn more income and this, according to the revenue, amounted to acquisition of a source of profit or income which though intangible was nevertheless a source or " spinner " of income and the amount spent on purchase of this source of profit or income, therefore, represented expenditure of capital nature. Now it is true that if disbursement is made for acquisition of a source of profit or income, it would ordinarily, in the absence of any other countervailing circumstances, be in the nature of capital expenditure. But we fail to see how it can at all be said in the present case that the assessee acquired a source of profit or income when it purchased loom hours. The source of profit or income was the profit-making apparatus and this remained untouched and unaltered. There was no enlargement of the permanent structure of which the income would be the produce or fruit. What the assessee acquired was merely an advantage in the nature of relaxation of restriction on working hours imposed by the working time agreement, so that the assessee could operate its profit-earning structure for a longer number of hours. Undoubtedly, the profit-earning structure of the assessee was enabled to produce more goods, but that was not because of any addition or augmentation in the profit-making structure, but because the profit-making structure could be operated for longer working hours. The expenditure incurred for this purpose was primarily and essentially related to the operation or working of the looms which constituted the profit-earning apparatus of the assessee. It was an expenditure for operating or working the looms for longer working hours with a view to producing a larger quantity of goods and earning more income and was, therefore, in the nature of revenue expenditure."

(Emphasis Supplied)



With regard to royalty payment, it is noticed that the payment was to be made on "Need Hours Basis". The respondent assessee did not acquire any enduring or long term right in the copyright and was entitled to play songs/music and had made payment to access the music, which was broadcast. No capital asset or right was acquired by the respondent which could be transferred and sold to the third party.

In the appeal for the assessment year 2008-09 another issue relating to rate of depreciation on KBA servo regulator has been raised. As per the Tribunal, the Voltage Stabilizer was an integral part of the computer system. The said finding is a finding of fact. In view of the decision of Delhi High Court in CIT v. BSES Yamuna Power Limited; ITA 1267/2010 decided on 31.08.2010, the Tribunal has rightly held that depreciation should be allowed @ 60%.

The appeals are dismissed being devoid of merit.

  
SANJIV KHANNA, J

  
SANJEEV SACHDEVA, J.

SEPTEMBER 25, 2013/sv