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

**Date of decision: 06.09.2017**

\+ ITA 724/2017 & CM No.31490/2017

PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

versus

M/S. TIMES INTERNET LTD. ..... Respondent

Through: Mr. Salil Aggarwal and Mr. Uma Shankar, Advs.

\+ ITA 716/2017 & CM No.31474/2017

PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

versus

M/S. TIMES INTERNET LTD. ..... Respondent

Through: Mr. Salil Aggarwal and Mr. Uma Shankar, Advs.

\+ ITA 753/2017 & CM No.32407/2017

PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

versus

M/S. TIMES INTERNET LTD. ..... Respondent

Through: Mr. Salil Aggarwal and Mr. Uma Shankar, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. These appeals are preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereafter referred to as "the Act") and challenge orders of the Income Tax Appellate Tribunal involving the same issue concerning separate years. Since the appeals raise common issues, for convenience, the facts in ITA No.724/2017 are taken as reference.

2. The original return for the Assessment Year 2006-07 and 2008-09 reported *inter alia* that the assessee/respondent had sold its business. At the same time, it had reported similar expenditure as previous years. The AO added back ₹16,12,31,000/- for Assessment Year 2006-07 and following the same reasoning disallowed a sum of ₹28,41,30,727/-. The AO's reasoning was that since the concerned business had been sold, the assessee could not have reported such high levels of expenditure. In so concluding, the AO projected the expenditure incurred by the assessee for the times it actually carried on business and applied them for the subsequent periods when it did not carry on such business. The Tribunal's reasoning for Assessment Year 2008-09, for the relevant year pertinently is extracted below:-

> *"14. Ground no. 1 of the Revenue's appeal is against the deletion of disallowance of Rs.16,12,31,000/-. The facts apropos this ground are that the AO observed that the assessee declared revenue receipts of Rs.112.97 crore for the current year as against the revenue receipts of Rs.124.67 crore for the immediately preceding year. The assessee was found to have incurred expenditure during the instant year at Rs.130.02 crore as against the expenditure of Rs.94.80 crore in the preceding year. On the perusal of details, it was observed that the assessee had not shown any income during the year in respect of: (i) Medianet; (ii) Content Selling; and (iii) Sale of Standalone publication. On being called upon to explain the reasons for not showing income from these sources, the assessee stated that the Medianet business*

*consisted of a PR brand which was managed by the assessee company on behalf of its holding company, Bennett Coleman & Co. Ltd. till 30.09.2004. The holding company withdrew this right from the assessee company from 30.09.2004 and handed over this business to a new group company called Optimal Media Solutions Ltd. After the termination of this line of business in the immediately preceding year, the assessee claimed not to have been engaged in rendering any services relating to Medianet business. The assessee also furnished particulars of income earned by the new company, M/s Optimal Media Solutions Ltd., from the business. Similarly, regarding the Sale of contents, the assessee submitted that this business hitherto entrusted to the assessee by its holding company was withdrawn w.e.f. 1.10.2004. Necessary communications withdrawing the above businesses from the assessee were also furnished to the AO. In this backdrop of the facts, the AO noticed that albeit such businesses were not carried on by the assessee during the year, the overall expenses of the assessee were still on northwards sojourn. This was held on the strength of the percentage of the expenses to revenue at 62.8% for the assessment year 2004-05 when the assessee was having these businesses; during the assessment year 2005-06 when these businesses remained with the assessee for a part of the year, the percentage of expenses went up to 73.5%; and during the year under consideration when these businesses were not at all carried on by the assessee, the percentage of expenses increased to 107.8%. The AO inferred that though: "there is no income on account of these two businesses to the assessee, but, still, it is incurring expenses for these two businesses." Applying the percentage of expense at 62.8% as relevant for the A.Y. 2004-05, the AO made disallowance for the remaining expenses of Rs.16,12,31,000/-. This disallowance was deleted in the first appeal. The Revenue is aggrieved against such deletion.*

*15. Having heard the rival submissions in the light of the material placed on record, it is observed that the AO made the*

*disallowance by retaining the percentage of expenses to the revenue at 62.8%. This was done in accordance with the percentage of expenses incurred by the assessee for the A.Y. 2004-05, when the assessee was having these businesses from its holding company. Such businesses were withdrawn by the holding company from the assessee w.e.f. 1.10.2004. The opinion of the AO that though there was no income to the assessee from these businesses, still it was incurring expenses for them, is unfounded. On a specific query, the ld. DR failed to draw our attention towards any specific expenditure incurred by the assessee qua these businesses withdrawn by the holding company. The AO made disallowance of Rs.16.12 crore simply by means of a mathematical exercise carried out by him. If he found the expenditure incurred by the assessee to be on higher side, it was incumbent upon him to specifically point out as to which expenses were not incurred for the purposes of business. No such exercise worth the name has been carried out. In our considered opinion, the ld. CIT(A) was fully justified in deleting this addition made by the AO on ad hoc basis. This ground is, therefore, not allowed."*

3. This Court is of the opinion that since the findings of the lower appellate authorities, especially the CIT(A) and the ITAT are concurrent on the facts, it cannot be said that any substantial question of law arises. Even otherwise, the AO's order presumed that the levels of expenditure necessarily had to drop, since the internet based business had been sold by the assessee. Such a conclusion could not have been arrived at unless the AO had considered all other factors including the nature of commercial activities that subsisted without such activity.

4. In ITA No.716/2017, another ground is urged by the Revenue as to the treatment to be given to the website expenditure. The AO had disallowed the assessee's claim that properly fell in the revenue stream

holding that the expenditure resulted in the capital advantage of an enduring nature. Both the CIT and the ITAT upset the findings of the AO concurrently. The ITAT held as follows:

> *"24. After considering the rival submissions and perusing the relevant material on record, we find that this issue is no more res integra in view of the judgment of the Hon'ble jurisdictional High Court in CIT vs. India Visit.com (P) Ltd. (2008) 219 CTR 603 (Del) in which it has been held that the expenditure on development of website is a revenue expenditure. Similar view has been taken by the Tribunal in the assessee's own case for the immediately preceding year. Respectfully following the precedent, we uphold the impugned order on this issue. This ground fails."*

5. This Court is of the opinion that since the reasoning in *CIT v. India visit.com* in ITA No.1011/2008 dated 05.09.2008 was the premise and the basis of the ITAT's order, no question of law arises in respect of the nature of such expenditure.

6. For the above reasons, it is held that ITA No.724/2017, 716/2017 and 753/2017 do not involve any substantial question of law. They are, accordingly, dismissed.

**S. RAVINDRA BHAT, J**

**SUNIL GAUR, J**

**SEPTEMBER 06, 2017**
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