



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 9th July, 2013

+

ITA 132/2010

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Suruchi Aggarwal, sr. standing
counsel.

versus

SAMSUNG INDIA ELECTRONICS LTD. Respondent
Through Mr. Satyen Sethi and Mr. Arta Tarana
Panda, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

This appeal under Section 260A of the Income Tax Act, 1961 (Act, for short) by the Revenue, which relates to the assessment year 1998-99 raises two issues. The first issue pertains to deletion of disallowance on account of brand-building and dealer's loyalty expenditure. The said issue is covered against the Revenue by decision dated 3rd September, 2012 in ITA 98/2010, *Commissioner of Income Tax Vs. Samsung India Electronics Ltd.* We note that ITA 98/2010 also relates to the assessment year 1998-99.



2. The second issue relates to training expenses of Rs.29,30,950/-. The said expenses were incurred by the respondent-assessee on training given to technical and some non-technical persons. The Assessing Officer has held that that the expenditure had resulted in enduring benefit to the assessee and amortized the expenditure over a period of six years. 1/6th of the said expenditure was allowed for the year 1998-99. Assessee filed first appeal but the CIT (Appeals), instead of agreeing with the assessee, disallowed the entire expenditure holding that it relates to 'pre setup period' and was capital expenditure. The CIT (Appeals) observed that some of the employees, mainly engineers and technicians, were sent to various plants in Indonesia, Bangkok and Seoul but the said training was given before commencement of the business of manufacturing which started from 17th June, 1997. The technicians were trained abroad during the period February-March 1997.

3. The contention of the assessee, which has been accepted by the tribunal, is though manufacturing of colour TV sets commenced with effect from 17th June, 1997, but the business was setup earlier. The date of commencement of manufacturing was not relevant. The Tribunal has held that the expenditure was essentially for the purpose of carrying on the existing business, for which the commercial operations had started in 1996-



1997, and the new manufacturing unit was an extension of existing business. We have already noticed that the Assessing Officer did not treat the expenditure in question as capital in nature but amortized it over a period of six years. The first appellate authority took notice of the fact that actual manufacturing activity commenced from 17th June, 1997, but did not go into the question as to the date on which business activities commenced i.e. business was setup and whether the manufacturing activity was in continuation of the earlier business. The first appellate authority has, however, recorded that the respondent-assessee had commenced its business during the previous year in 1995-96 and training was given in March, 1997.

4. Pertinent observations have been made in *Commissioner of Income Tax v. Cement and Chemical Industries Ltd.* [1973] 91 ITR 170 by a division bench of Gujarat High Court (authored by Justice Bhagwati P.N. J as his Lordship then was) that “business” connotes a continuous course of activities and all the activities need not start simultaneously in order that the business may commence. The business would commence with the activity which is first in point of time and which much necessarily precede all other activities. Thus, in that case when the cement company quarried the leased area of land and extracted limestone from it, it was considered as much an



activity in the course of carrying on the business as the subsequent activities of manufacture of cement and sale of manufactured cement. This activity came first in point and laid foundation for others and, hence, was held to be deductible in computing the trading profits of the assessee for the relevant assessment years.

5. In view of the findings recorded by the tribunal, we do not think that any substantial question of law arises for consideration and the appeal is dismissed.

SANJIV KHANNA, J

SANJEEV SACHDEVA, J

JULY 09, 2013
NA