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

Decided on : 15.01.2015

\+ **ITA 344/2014**

CIT -LARGE TAX PAYERS UNIT ..... Appellant

Through : Sh. N.P. Sahni, Sr. Standing Counsel with Sh. Nitin Gulati, Jr. Standing Counsel and Sh. Judy James, Jr. Standing Counsel.

versus

SRF LTD. ..... Respondent

Through Sh. Satyen Sethi and Sh. Arta Trana Panda, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue is aggrieved by the impugned order of the Income Tax Appellate Tribunal (ITAT) dated 06.09.2013 in ITA No.4454/Del/2010. The assessee had claimed the sum of ₹7,03,95,000/- as pre-capitalization expenses towards expansion of its business. This was disallowed by the Assessing Officer (AO) as well as the CIT (Appeals) concurrently. The Revenue urges that the ITAT's decision, reversing the view of the lower authorities is contrary to law.

2. Briefly the facts are that the assessee engages itself in the manufacturing of Nylon Tyre Cord Fabrics, Packaging Film,

Flurochemicals, Chloromethane and Refrigerant Gases. During the year in question, i.e. 2005-06, it sought to expand its business in polyester films at Indore, pharma chemical business at Bhiwadi and industrial fabrics business at Trichy. Towards these, it claimed expenses to the tune of ₹7,03,95,000/- as pre-capitalization costs. The Revenue treated this as properly falling in the capital side and disallowed the expenditure. At the same time, the Revenue also permitted the allowable depreciation. The CIT (Appeals) confirmed the findings of the AO. The ITAT, after considering the existing business and the expansion sought to be urged by the assessee in support of its claim, that the pre-capitalization expenditure is really revenue in nature, held that there was an element of interlacing and intermingling of funds between the new or expanding venture and the existing venture, and consequently the expenses had to be treated as falling on the revenue side.

3. Learned counsel for the Revenue urges that the ITAT plainly proceeded on erroneous premise and did not properly appreciate the decision of the Supreme Court in *Challapalli Sugar Ltd. v. CIT* 1975 (98) ITR 167 (SC). He also urged that the setting up of an entirely new line of business cannot be treated as expansion of existing business and relied upon the judgment of this Court in *CIT v. Food Specialities Ltd.* 1982 (136) ITR 203 (Del) and *CIT v. Jama Industries Ltd.* 129 ITR 373. He also relied upon the decisions of other High Courts.

4. Learned counsel for the assessee, on the other hand, relied upon the judgment in *Jay Engineering Works Ltd. v. CIT* 2009 (311) ITR 405 (Del) to say that seemingly diverse and disparate lines of business can yet be treated as part of the same business provided certain important parameters are kept

in mind - that both should have common management and that the funds used for the purposes of the existing business as well as the new entity should be common. Applying these tests, urged learned counsel, the assessee was squarely covered by the ruling in *Jay Engineering (supra).* In *Jay Engineering (supra),* a Division Bench of this Court relied upon large number of previous judgments, including judgments of this Court and held as follows:

> *"13. Finally, in Veecumsees v. Commissioner of Income Tax MANU/SC/0884/1996 : [1996]220ITR185(SC) , the assessed ran a jewellery business and then commenced business in the exhibition of cinematographic films. The assessed obtained loans for building a cinema theater and the question was whether the interest payable on the loans borrowed for the new business was a revenue expenditure or not. While answering the question in favor of the assessed, the Supreme Court found that the two businesses were composite in the sense that there was interconnection, interlacing or interdependence between the jewellery business and the cinema business.*
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> *14. On an appreciation of the law laid down by the various decisions referred to above, it is clear that the nature of the new business is not a decisive test for determining whether or not there is an expansion of an existing business. The nature of the business could be as distinct as a jewellery business and a business of cinematographic films; it could be as different as manufacture of metal alloys and manufacture of rubber products. What is of importance is that the control of both the ventures, the existing venture as well as the new venture, must be in the hands of one establishment or management or administration. The place of business of the existing business and the new business may not be in close proximity - it could be as far apart as Baroda and Bangalore. However, the funds utilised for the management of both the concerns must be common as reflected in the balance sheet of the company.*

> *15. In other words, there may be several permutations and combinations that may arise for determining whether the expenditure is revenue or capital and each case must, of course, be dealt with on the broad principles that have been accepted by the Courts as are mentioned above.*
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> *16. Applying these principles to the present case, it is quite clear to us that the control over the two units is in the hands of the same management and administration. There is no doubt on this score and in fact, the annual report of the assessed, which has been shown to us by learned Counsel, makes a reference to the Project at Hyderabad. There can be no dispute from the facts that have been placed before us on record that the new venture was managed from common funds and there is the necessary unity of control leading to an interconnection, interdependence and interlacing of the two ventures such that it can be said that the fuel injection equipment project is only an extension of the existing business of the assessed and, Therefore, the expenditure incurred by the assessed on this Project is a revenue expenditure."*

5. This Court notices that in Jay engineering (supra) itself, the Challapalli (supra) holding was noticed and at the same time distinguished in the light of the previous ruling in India Cements Ltd. v. CIT 1966 (60) ITR 52. The important point of distinction noted by the Court in Jay *Engineering (supra),* to say that *Challapalli (supra)* was inapplicable, was that in that case the assessee had borrowed considerable sums of money for installation of plant and machinery, and interest was sought to be loaded on the cost of plant and machinery. The AO had rejected the assessee's claim and held that interest was an important part of revenue expenditure and no depreciation could be claimed as was done in that case. The assessee's contention in that respect was accepted by the Supreme Court. As would appear from *Jay Engineering (supra),* the previous rulings were cited and

properly dealt with. *Jay Engineering (supra)*, has affirmed the basis of the decision of the ITAT impugned in this case. We are, therefore, of the opinion that no substantial question of law arises for consideration. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

JANUARY 15, 2015