

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

+ **ITA NO.978/2011**

% **Date of Decision : 12th December, 2011.**

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

versus

MONTO MOTORS LTD Respondent
Through: Respondent through representative

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA,J: (ORAL)

Revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 against the order of the Tribunal dated 7.12.2010 in the case of Monto Motors Ltd. The assessment year in question is 2004-05.

2. The respondent assessee was set up in the year 1998 and was

engaged in the manufacture and sale of moped and bikes etc. During the year in question the respondent assessee had incurred advertisement expense of Rs.1,36,88,928/-. The Assessing Officer held that the said expense was of capital nature as it was incurred for enduring benefit to the business of assessee. It was observed that the advantage may be available in the successive years also. There is no discussion of factual aspects, nature, type, purpose or objective behind the said expenditure. The aforesaid addition was made in the re-assessment proceedings. In the original assessment proceedings no addition on this account was made. The quantum of the expenditure is not in dispute.

3. The CIT (A) deleted the said addition as it was pointed out that the expenses on advertisement, sales promotion were incurred after the assessee had already started marketing the product. It was pointed out that as the sales were sluggish and not up to the expectations and as business of selling motor bikes was a competitive business the respondent had decided to advertise and undertake sales promotion. He accordingly held that the respondent was entitled to treat the aforesaid expense as a revenue expense. The aforesaid findings were upheld by the Income Tax Appellate Tribunal (Tribunal, for short).

4. In view of the factual matrix which is available on record and as the Assessing Officer has not dealt with the factual matrix in detail we are not inclined to admit the present appeal. The advertisement expenses as per the findings of both the CIT (Appeals) and the Tribunal were not of

capital nature. Advertisement expenses when incurred to increase sales of products are usually treated as a revenue expenditure, since the memory of purchasers or customers is short. Advertisement are issued from time to time and the expenditure is incurred periodically, so that the customers remain attracted and do not forget the product and its qualities. The advertisements published/displayed may not be of relevance or significance after lapse of time in a highly competitive market, wherein the products of different companies compete and are available in abundance. Advertisements and sales promotion are conducted to increase sale and their impact is limited and felt for a short duration. No permanent character or advantage is achieved and is palpable, unless special or specific factors are brought on record. Expenses for advertising consumer products generally are a part of the process of profit earning and not in the nature of capital outlay. The expenses in the present case were not incurred once and for all, but were a periodical expenses which had to be incurred continuously in view of the nature of the business. It was an on-going expense. Given the factual matrix, it is difficult to hold that the expenses were incurred for setting the profit earning machinery in motion or not for earning profits.

5. Harjeet Singh, Representative of the respondent has pointed out that the respondent company has never made any profits and has virtually closed down with heavy cumulative losses of more than Rs.9 crores. Even in the year in question, the respondent had incurred a loss of Rs.67,48,000/- as per the assessment order.

6. In view of the aforesaid discussion, the appeal is dismissed. No costs.

SANJIV KHANNA, J

R.V.EASWAR, J

DECEMBER 12, 2011

Mm/Bisht