

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1545 OF 2009

The Commissioner of Income Tax ..Appellant.

V/s.

Mercedes Benz India Pvt. Ltd.
(Formerly known as Daimler Chrysler India Pvt. Ltd.) ..Respondent.

Mr. Vimal Gupta, Adv. for appellant.

Mr. Dinesh Vyas, senior counsel with Ajit Shah, Adv. for respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 23RD SEPTEMBER, 2009.

P.C. :-

1. Heard learned counsel for the revenue and the respondent.

Perused appeal.

2. The appeal seeks to raise the following issue as substantial question of law:-

" Whether on the facts and circumstances of the case and in law, the Tribunal has erred in treating the payment made on account of termination of distributorship of M/s.Telco as revenue expenditure when the assessee derived enduring benefit and therefore the expenditure was of capital nature ? "

3. The Tribunal after detailed discussion and consideration of the

factual matrix applied the ratio laid down by the Apex Court in the case Empire Jute Co. Ltd. V/s. CIT reported in [1980] 124 ITR 0001 (S.C.) flowing from the following paragraph from the judgment:-

"There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. "

4. The aforesaid principles of law has been applied to the facts of the case in hand, which is clear of the case from paragraph 11 quoted hereinbelow:-

" Exconsequenti to aforesaid we hereby conclude in a nutshell that the appellant had taken a conscious commercial decision not to continue with the existing distributorship system because it had not only become superfluous but also a disadvantageous arrangement in the future development of the sale market of the luxury / commercial vehicle; rather causing a hindrance in the management; so under compelling necessity decided to abandon the same hence incurred the expenditure akin to the business necessity. Under the totality of the facts and circumstances of the case by relying upon the ratio decidendi of the precedents cited; we hereby reverse the finding of the authorities below and allow this ground. "

5. During the course of hearing, learned senior counsel could demonstrate as to how the amount of Rs.20 crores was arrived. The material

which was placed before the Tribunal was also placed before us during the course of hearing. We had an opportunity to go through the same. After having gone through the same, we are of the considered view that the Tribunal has recorded findings of fact based on appreciation of evidence, supported by evidence on record following law laid down by the Apex Court.

6. In the above facts and circumstances of the case, no substantial question of law arise in the appeal. The appeal is thus dismissed in limini with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA, J.)