IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on 23.01.2009

ITA 1293/2008

23.01.2009

**COMMISSIONER OF INCOME TAX
DELHI ?VI, NEW DELHI ? Appellant**

- versus ?

**TRIVENI ENGINEERING and
INDUSTRIES LIMITED ... Respondent**

WITH

ITA 1298/2008

**COMMISSIONER OF INCOME TAX
DELHI ?VI, NEW DELHI ? Appellant**

- versus ?

**TRIVENI ENGINEERING and
INDUSTRIES LIMITED ... Respondent**

AND

ITA 1326/2008

**COMMISSIONER OF INCOME TAX
DELHI ?VI, NEW DELHI ? Appellant**

- versus ?

**TRIVENI ENGINEERING and
INDUSTRIES LIMITED ... Respondent**

**Advocates who appeared in this case:
For the Appellant : Ms Prem Lata Bansal**

For the Respondent : Mr Ajay Vohra with Ms Kavita Jha and Mr Sriram Krishna

**CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON?BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J
1. These three appeals pertain to the assessment years 1994-95, 1995-96 and 1997-98 arising out of the common order dated 14.02.2008 passed by the Income-tax Appellate Tribunal in ITA Nos. 294 and 295/Del/2003 and ITA No.1961/Del/2004 respectively.

2. The revenue is aggrieved by the fact that the Income-tax Appellate Tribunal allowed the expenditure incurred by the assessee in connection with the modernization and expansion of, inter alia, its Deoband and Ramkola units by treating the same as expenditure of a revenue nature. The appellant / revenue is further aggrieved by the fact that the tribunal allowed the said expenditure although the assessee, in its books of accounts, had treated the same as capital expenditure. The appellant / revenue has also raised the issue that the tribunal had permitted deduction of administrative expenses incurred in the course of the renovation of the two units.

3. The Assessing Officer as well as the Commissioner of Income-tax (Appeals), in each of the three years in question, disallowed the expenditure

under the head?administrative expenses? incurred in connection with modernization and expansion of the Deoband and Ramkola units, by holding that the expenditure had been incurred for acquiring a benefit of an enduring nature and consequently it was capital in nature. The Assessing Officer had also noted that the expenditure had been capitalized in the books of accounts maintained by the assessee and, therefore, the assessee was asked to explain as to why the said expenditure should not be treated as capital in nature. The assessee offered the explanation that the expenditure had been incurred to improve the profitability of the company inasmuch as, after such expenditure, the assessee would be in a position to crush more sugarcane in its Deoband and Ramkola units.The Assessing Officer, however, did not accept this explanation and capitalized the administrative expenditure and allowed depreciation thereon @ 25%. The Commissioner of Income-tax (Appeals) confirmed the views of the Assessing Officer.

4. The tribunal noted the arguments of the learned counsel for the assessee that the administrative expenses were not the actual expenses, but were estimated at 3% of the cost of machinery or building put to use in the years in question. It was also contended that the expenses were not for installation of new machinery or erection of new building or transportation of material and that they were purely administrative expenses of a revenue nature. It was also pointed out that the assessee had undertaken the expansion of its existing sugar mills with a view to enhance their capacities.

5. After hearing the arguments on behalf of the assessee as well as the revenue,the tribunal observed that there was no dispute about the fact that the assessee had been carrying on its sugar business in a number of units, including its units at Deoband and Ramkola. The assessee had modernized these two units with a view to achieve a greater capacity. In this process, certain capital expenditure was incurred and administrative expenses had been allocated on an estimate basis towards the renovation and modernization of the said units. The tribunal held that though the expenses had been capitalized in the books of accounts of the assessee, this would not be conclusive of the nature as to whether the expenditure was of a capital nature or a revenue nature. The tribunal followed the decision of the Supreme Court in the case of The Kedarnath Jute Manufacturing Co. Limited v. The Commissioner of Income Tax (Central),Calcutta??: 82 ITR 363 to hold that entries in the books of accounts of the assessee were not conclusive of the nature of expenses. The tribunal thereafter examined the issue as to whether in a continuing business, when expenditure is incurred for renovation of its existing units, the said expenditure would be of a capital or a

revenue nature. The tribunal followed the decision of this court in the case of CIT v. Relaxo Footwears Limited: 293 ITR 231. In that decision,this court, following its earlier decision in the case of CIT v. Modi Industries Limited: 200 ITR 341(Del), held that as the new unit was part of the existing business and there was no dispute that there was unity of control and interlacing of the units, the expenses incurred by the assessee for the setting up of a new unit, would be of a revenue nature. We find that, in the present case, the tribunal has correctly applied the decision of this court in Relaxo Footwears Limited (supra). The administrative expenses would be of a revenue nature as there was continuity of business. The tribunal, in our view, has correctly concluded that the authorities below had erred in holding the said expenditure to be of a capital nature. We agree with the conclusion of the tribunal that the whole of the expenditure is to be allowed as revenue expenditure and consequently there would be no question of grant of depreciation on such expenditure.

6. In these circumstances, we feel that no interference with the impugned order of the tribunal is called for. The tribunal has correctly appreciated the law on the point and has applied the same to the undisputed facts.

7. No substantial question of law arises for our consideration. The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J
January 23, 2009
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