

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

+ ITA 815/2010

COMMISSIONER OF  
INCOME TAX

Through ..... Appellant  
Ms. Suruchii Aggarwal with  
Mr. Anish K.V., Advocates

versus

M/S. SHELL BITUMEN INDIA  
(P) LTD.

Through ..... Respondent  
None

% Reserved on : 3<sup>rd</sup> August, 2010  
Date of Decision : 11<sup>th</sup> August, 2010

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

## **J U D G M E N T**

### **MANMOHAN, J**

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 10<sup>th</sup> September, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 3186/Del/2009 relating to the Assessment Year 2005-2006.

2. Ms. Suruchii Aggarwal, learned counsel for Revenue submitted that ITAT had failed to appreciate that the consultancy charges paid to

various authorities for obtaining study reports in Bitumen constituted an enduring advantage to the respondent-assessee. She further submitted that the study reports in Bitumen constituted acquisition of an income-earning asset and hence expense thereon comprised capital expenditure. Ms. Aggarwal placed reliance upon the Assessing Officer's order, which reads as under :-

*“The assessee's submissions have been considered and are not acceptable. From the nature of expenditure incurred it can be seen that out of Rs.18,50,967/- the expenditure totaling to Rs.12,07,907/- has been spent on account of Sturdy on Bitumen, Water Proofing, Feedback Reports etc. which will give the assessee benefit of enduring in nature and thus is treated as capital expenditure.”*

3. Ms. Aggarwal also placed reliance upon a judgment of this Court in ***Commissioner of Income Tax Vs. Gujarat Guardian Ltd., (2008) 306 ITR 320 (Delhi)***.

4. Having perused the paper book and having heard Ms. Aggarwal, we are in agreement with the conclusion arrived at by the Commissioner of Income Tax (Appeals) and the ITAT that the consultancy expenditure in the present case amounted to revenue expenditure, as by virtue of the consultancy the respondent-assessee had neither acquired an income earning asset nor did it obtain any enduring advantage. Moreover, the aforesaid expenses are clearly relatable to the business of the respondent-assessee.

5. We also find that the Assessing Officer has not given any reason to treat the consultancy charges as that of the capital expenditure.

6. In fact, the test to determine whether an expenditure is capital or

revenue has been outlined in a number of judgments. The Supreme Court in ***Commissioner of Income Tax Vs. Madras Auto Service (P.) Ltd. (1998) 233 ITR 468*** has laid down general principles applicable for determining whether a particular expenditure is capital or revenue one. The general principles outlined by the Supreme Court in the aforesaid case are as under:-

*“(1) Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business or for a substantial replacement of equipment;*

*(2) Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade. If what is got rid of by a lump sum payment is an annual business expense chargeable against revenue, the lump sum payment should equally be regarded as a business expense, but if the lump sum payment brings in a capital asset, then that puts the business on another footing altogether;*

*(3) Whether for the purpose of the expenditure, any capital was withdrawn, or, in other words, whether the object of incurring the expenditure was to employ what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital.”*

7. A Division Bench of this Court in ***Hindustan Times Ltd. Vs. Commissioner of Income Tax, New Delhi (1980) 122 ITR 977*** has held that the word “enduring” has a special significance and that what matters is the nature of advantage in a commercial sense. The Court clarified that it is only where the advantage is in the capital field that the expenditure would be capital in nature.

8. We are afraid that the judgment referred to by the learned counsel for the Revenue has no application to the facts of the present case as in the case cited by her, the issue whether consultancy charges amount to capital or revenue expenditure did not arise.

9. In fact, in the present case the advantage of the consultancy report left the respondent-assessee's fixed capital untouched. Consequently, in our view, the said expenditure would be on revenue account.

10. Accordingly, present appeal, being devoid of merit, is dismissed *in limine*.

**MANMOHAN, J**

**CHIEF JUSTICE**

**AUGUST 11, 2010**

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