

**IN THE HIGH COURT OF PUNJAB AND HARYANA**

**AT CHANDIGARH**

**I.T.R. No. 88 of 1998**

**COMMISSIONER OF INCOME TAX, LUDHIANA**

**Vs**

**M/s MAJESTIC AUTO LTD**

**Adarsh Kumar Goel And Daya Chaudhary, JJ**

**Dated : August 17, 2009**

**Appellant Rep. by : Mr. Krishan Mehta, Adv**  
**Respondent Rep. by : Mr. Animesh Sharma, Adv**

**Income tax - AO disallows certain expenses of the assessee on the ground that the expenses are related to a new venture of Moped manufacturing and the same be treated as capital in nature - Tribunal disagrees - held, since the expenses were incurred in the course of the business of the assessee with a view to get latest technology know-how of mopeds from Honda Motors Company Limited, it had nexus with the existing business of the assessee and it is revenue expenditure - Revenue's appeal dismissed**

## **JUDGEMENT**

**Per : Adarsh Kumar Goel, J :**

1. The Income Tax Appellate Tribunal, Chandigarh Bench has referred following question of law arising out of its order dated 18.9.1996 passed in ITA No. 1769/Chandi/90 for assessment year 1984-85 for opinion of this Court:-

“Whether, on the facts and in the circumstances of the case, the ITAT was right in law in deleting the addition of Rs.4,40,183/- out of travelling expenses, Rs. 1,10,804/- out of salary and Rs.53,543/- out of research and development expenses claimed by the assessee pertaining to M/s Honda Motor Cycles for which the assessee is a promoter and is separate identity under the head of Hero Honda Ltd. and came into existence afterwards.”

2. The Assessing Officer made additions referred to in the question, which were upheld by the CIT(A). The Tribunal, however, held the expenses to be revenue expenses having nexus to the existing business of the assessee. The relevant finding of the Tribunal is as under:-

“Grounds No.6,7 and 8 are inter-related – confirmation of additions of Rs. 4,40,183/- out of travelling expenses; Rs.1,10,804/- out of salary; and Rs. 53,543/- out of research and development expenses. The assessee company had claimed total expenditure of Rs.1,67,973/- under the head 'Research and Development'. It included a sum of Rs. 51,994/- in respect of Motorcycle Project. The rest of the expenditure related to R & D in respect of Mopeds. Expenditure relating to the Motorcycle Project, which are debited to different revenue account, are as under:-

i) Travelling Rs.3,64,937/-

ii) Sales promotion 20,311

iii) Research and Development 51,994

iv) Establishment- salary paid to 25,935

Sh. Amit Chaturvedi

v) Rent 16,500

The company manufactured Mopeds. In order to expand its business, it entered into negotiations with Honda Motors Co. Ltd., Japan, who desired that the assessee should first stop production of Mopeds. The company was very much interested in getting the latest technical know-how of manufacturing Mopeds from Honda Motors Co. Ltd., who insisted on equity participation and in the financial management. The assessee-company, however, did not go ahead with that expansion programme, but it subsequently succeeded in getting the technical know-how from that company on payment of lesser amount. The assessee had also entered into collaboration with another foreign company for manufacturing of new series of mopeds. The assessee placed reliance on the cases of J.K. Industries (P) Ltd. (71 I.T.R. 594 and Karamchand Premchand P. Ltd. (137 I.T.R. 209 (Guj)). Reliance was further placed on the cases of Bombay Steam Navigation Co (1953) Pvt. Ltd. (1965) 56 I.T.R. 52 (Bom) and Produce Exchange Corpn. Ltd. (77 ITR 739 SC). Ld. Counsel pleaded

that since it is expansion of existing business, all expenses are allowable and Id. Lower authorities were not justified in making and confirming the additions.

Ld. D.R., on the other hand, relied on the orders of the lower authorities and submitted that since it is a new venture and expenditure being of capital nature, that of promoter, cannot be allowed as revenue expenditure. She submitted that these expenses being of other company, which is not in existence, can not be allowed. She placed reliance on the case of City Mills Distributors (P) Ltd (1996) 219 I.T.R. 1 (S.C.). Ld. Counsel, in counter reply, submitted that this authority is not at all applicable to the facts of the present case. He relied on the case of Wood Craft Products Ltd. (1996) 217 I.T.R. 862 (Cal), wherein it was held as under:-

“.....that the expenditure was of a revenue nature because the expenditure had direct nexus with the existing business carried on by the assessee. May be, the expenditure as abortive but its character as a revenue expenditure incurred for the purpose of expansion of existing business would not change.”

We have heard the parties at length, have gone through the record as also the case law cited supra. On entirety of facts and circumstances of the case, we are of the view that the expenses mentioned in grounds Nos. 6 to 8 are allowable as of revenue nature. We hold accordingly. Grounds thus succeed.”

3. We have heard learned counsel for the parties.

4. A reference to the finding of the Tribunal shows that the expenses had been incurred in the course of the business of the assessee with a view to get latest technology know-how of mopeds from Honda Motors Company Limited. In such a situation, the expenses incurred had nexus with the existing business of the assessee. Question referred is basically of fact.

5. In view of finding of the Tribunal, the question is answered against the revenue and in favour of the assessee.

6. Reference is disposed of accordingly.