

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.02.2010

+ **ITA 165/2010**

COMMISSIONER OF INCOME TAX-IV ... Appellant

- versus -

M/S DELHI PRESS SAMACHAR PATRA (P) LTD ... Respondent

Advocates who appeared in this case:-

For the Petitioner : Mr N. P. Sahni with Mr P. C. Yadav
For the Respondent : None

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

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 (ORAL)

CM 1650/2010

The delay in re-filing the appeal is condoned.

This application stands disposed of.

ITA 165/2010

1. This appeal by the revenue is directed against the order dated 27.02.2009 passed by the Income Tax Appellate Tribunal in ITA No. 2967/Del/2007 relating to the assessment year 2004-2005.
2. The only issue that is sought to be raised in the present appeal is with regard to the deletion of a sum of Rs 35,51,245/- by the Tribunal, which had

earlier been disallowed by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) on the ground that the said sum did not represent current repairs and was in the nature of capital expenditure.

3. We find that the Tribunal has adequately and in great detail dealt with the entire issue. The assessee has a press building which is used for the purposes of its business which includes the printing and publication of magazines. The said press building was constructed in the year 1975 and has a built up area of 130680 sq. feet. Repairs have been carried out in the said building from time to time. The assessee incurred a sum of Rs 35,51,245/- in the year in question on the following works:-

- “(i) Water proofing of roofs with stones.
- (ii) Reinforcement of old beams in which steel bars and plasters were corroded.
- (iii) Relaying of worn out flooring of print shop/ process rooms etc.
- (iv) Repairing and relaying / carpeting of roads running inside the press compound.
- (v) Repairing and replacement of workers wash rooms, hand wash areas, damaged glass, wood work.
- (vi) Repairing and relaying boundary walls and gates.
- (vii) Repairing and reconstructions of cooling towers area.
- (viii) Repairing of cement sheets and laying of fiber coated sheets to prevent seepage, water and air.
- (ix) Repairing of AC Chiller rooms and plants.”

The said sum was claimed by the assessee as an allowable expense under the head of current repairs as defined in Section 31(i) of the Income Tax Act,

1961 (hereinafter referred to as 'the said Act').

4. The Assessing Officer as well as the Commissioner of Income Tax (Appeals) observed that in the earlier years the assessee had been incurring expenses on account of repairs of building ranging from Rs 6,98,946/- to Rs 11,66,955/- and the same had been allowed by the department as an allowable expenditure. However, the Assessing Officer and the Commissioner of Income Tax (Appeals) were perhaps impressed by the magnitude of the expenditure in the current year which was to the tune of Rs 35,51,245/- and came to the conclusion that it was in the nature of capital expenditure and, therefore, disallowed the same.

5. The Tribunal, after examining the facts of the case, came to the conclusion that the expenditure was incurred on repairs, reinforcement, replacement of dilapidated beams, pillars, walls etc. of the existing press building and that the assessee did not bring into existence any new asset over and above the existing building. The Tribunal also observed that the assessee had been incurring such expenditure in the past as and when the need arose and it was towards preserving and maintaining the existing asset. The Tribunal also noted several decisions of the Supreme Court including that of **CIT v. Saravana Spinning Mills P. Ltd: 293 ITR 201(SC)**. The Tribunal also noted that the department doubted the nature of the expenditure considering the magnitude of the expenditure incurred in the current year compared to the expenditure in the earlier years. The Tribunal observed that the authorities below had acted on the presumption that a part

of the building had been demolished and that the items had actually been used for erection of a new structure. However, the Tribunal also observed that for this conclusion, the department could not bring on record any evidence to justify the stand that the expenditure was actually for erection of a new building or asset. The Tribunal also noticed that the contention of the assessee that it had undertaken major repairs to put the dilapidated columns, beams, roofs etc. in its original position, which had become dangerous and unsafe for the workmen and hindered the normal operation of the business, was not controverted by the departmental representative nor had any evidence to the contrary been produced before the Tribunal or the authorities below. It was ultimately concluded that employing the test indicated in *Saravana Spinning Mills (supra)*, the assessee had incurred the said expenditure only to preserve and maintain the existing asset and that the expenditure was not of a nature which brought into being a new asset or created a new advantage of an enduring nature. Consequently, the Tribunal deleted the disallowance.

6. We find no reason to interfere with these findings which are essentially in the nature of factual findings. No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

FEBRUARY 17, 2010
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