आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 654/JP/2017
निर्धारण वर्ष/Assessment Years : 2010-11

Shri Harshvardhan Johari T-2 Pallavi Apartment, Opp. Laxmi Vilas Hotel, Tonk Road, Jaipur.	बनाम Vs.	The DCIT, Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFVPJ 2660 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Dileep Shivpuri (Adv.)
राजस्व की ओर से/ Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 17/12/2019
उदघोषणा की तारीख/Date of Pronouncement : 11/03/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT(A)-4, Jaipur dated 26.05.2017 for Assessment Year 2010-11 wherein the assessee has taken the following grounds of appeal:-

"1. Under the facts and circumstances of the case, the ld. CIT(Appeals)-4, Jaipur has erred in not quashing the assessment order passed by DCIT, Central Circle-3, Jaipur u/s 143(3) r.w.s. 153A of the IT Act, 1961 which is illegal and bad in law.

2. Under the facts and circumstances of the case, the ld. CIT(Appeals)-4, Jaipur has erred in confirming the addition of Rs. 1,11,35,190/- made by DCIT, Central Circle-3 on account of education expenses incurred by the appellant on himself."

2. Briefly the facts of the case are that the assessee, an individual, filed his return of income on 10.10.2010 declaring total income of Rs. 54,94,370/-. Subsequently, a search and seizure operation U/s 132 of the IT Act was carried out on 05.09.2011 in case of Johari group to which the assessee belongs. Pursuant to notice U/s 153A of the Act, the assessee filed his return of income declaring income of Rs. 54,94,370/- as originally declared in the return filed U/s 139(1) of the Act. During the course of proceedings, on perusal of the profit and loss account of M/s Harshvardhan, a proprietorship concern of the assessee, it was found by the Assessing Officer that the assessee has claimed an amount of Rs. 1,11,35,190/- towards education expenses and a show cause was issued as to why the said expenses should not be disallowed.

3. In response, the assessee submitted that the said claim towards education expenses is in respect of a course in business management pursued by him from CASS Business School, London to acquire business acumen in management, marketing, human recourse management, finance and account etc. which help in conducting his business more efficiently, accordingly the expenditure incurred is wholly and exclusively for the purpose of business and is allowable U/s 37(1) of the Act.

4. The reply so filed was not found acceptable to the Assessing Officer as the expenses so claimed were found to have no nexus with the assessee's business and are of personal in nature therefore, the amount of Rs. 1,11,35,190/- was disallowed and added to the total income of the assessee and assessment was completed U/s 143(3) r.w.s 153A of the Act vide order dated 10.03.2015 at total assessed income of Rs. 1,66,29,560/-.

5. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A). It was contended before the ld. CIT(A) that the Assessing Officer has erred in disallowance of education expenses as no incriminating material was found during the search proceedings and the assessment proceeding were not abated besides submissions on merits of the case.

6. As per the ld. CIT(A), the action of the Assessing Officer was justified as the original return filed on 10.10.2010 U/s 139 of the Act was only processed U/s 143(1) and processing U/s 143(1) is neither assessment nor completed assessment, therefore, it is not a case of abated assessment as per the provisions of Section 153A of the Act on merits. The ld. CIT(A) further held that the assessee was pursuing B.Sc(Hons) in business management from CASS business school, London during the year 2006-09 and M.Sc in finance from Imperial college of London in the year 2010-2011 which is not specialized course *per se* meant for the trading of bullion and base metals. Further, it was held by the ld CIT(A) that every claim of deduction cannot be allowed U/s 37 of the Act as the assessee's claim falls under the category of

personal in nature and the assessee has also failed to provide direct nexus between the general business management courses pursued and trading of bullion and base metal business. Accordingly, the addition made by the Assessing Officer was confirmed. Against the said findings, the assessee is now in appeal before us.

7. Regarding ground no. 1, the ld. Counsel for the assessee submitted that it was the stand of the assessee before the CIT(A) that since no incriminating material was found during the course of search, there could not have been any addition made and the the returned income should be accepted. In support, reliance was placed on the following decisions namely, CIT v. Continental Warehousing Corporation [2015] 93 CCH 0048 (Bom), PCIT v. Dipak Panchal [2017] 98CCH 0074 (Guj), PCIT v. Devangi Alias Rupa [2017] 98 CCH 0051 (Guj) and CIT v. Kabul Chawla [2016] 380 ITR 573 (Del).

8. It was submitted that the ld CIT(A) pointed out that in the case of Kabul Chawla, the earlier assessment was completed u/s 143(3) while in the present case, it was only processed u/s 143(1) of the Act. He drew support from the following decisions namely, CIT v Chetan Das Lachman Das [2012] 254 CTR 392 (Delhi), CIT v. Anil Kumar Bhatia [2013] 352ITR 493 (Delhi) and Sunny Jacob Jewellers and Wedding Centre v. Dy. CIT [2014] 362 ITR 664 (Ker).

9. It was submitted by the ld AR that the fact as to whether the earlier assessment was completed u/s 143(3) or u/s 143(1) of

the I.T. Act is not material to the issue at hand. It does not, in any way, affect the legal proposition that if no incriminating document has been found during search, no addition can be made, and the returned income has to be accepted. Attention is drawn to the decision of the Delhi High Court in the case of PCIT v. Meeta Gutgutia (2017) 395 ITR 526 (Delhi) wherein it was held that invocation of section 153A to reopen concluded assessments of assessment years earlier to year of search is not justified in absence of incriminating material qua each of the assessment years. It was submitted that SLP against this decision of the Delhi High Court was dismissed by the Hon'ble Supreme Court in PCIT v. Meeta Gutgutia [2018] 257 Taxman 441 (SC). Reliance was also placed on the decision of the Jodhpur Tribunal in the case of Dy. CIT v. Pacific Industries Ltd. [2019] 111 taxmann.com 32 (Jodhpur-Trib.) wherein also the same sentiments have been expressed. In view of the cases cited above, it was submitted that the assessment framed by making an addition u/s 153A when no incriminating document was found during search, should be set aside and the AO directed to complete the assessment at the returned income.

10. Regarding ground no. 2, it was submitted by the ld. Counsel for the assessee that on merits, this addition was confirmed by the ld. CIT(A) on two grounds- that interest paid on education loan is a specific deduction, and that no business purpose is served by obtaining a B.Sc. (Hons) degree in business management and M.Sc. in Finance , and this expenditure falls in the category of personal expense.

It was submitted that the question of taking a loan and claiming deduction on the interest paid on that loan does not arise in the present case as the assessee has spent his own money on education purposes. Therefore, there is no question of claiming deduction on interest paid. The ld CIT(A) seems to have mixed up the facts of this case and the reason given by him is fallacious, based on wrong facts, and is accordingly to be dismissed.

11. It was submitted that the second argument of the ld. CIT(A) is equally fallacious since business management is a course that is extremely useful for furtherance and growth of any business, leave aside the assessee's business. No worthwhile argument has been advanced by the ld. CIT(A) as to why he has treated this expense as a personal expense. It has been held in a plethora of judgments that any expense that goes towards better understanding and/or management of one's business is an expense allowable u/s 37 of the I.T Act. It has also been held that it is not for the AO to step into the shoes of a businessman and dictate to him how he should run his business. In support, reliance was placed on the following decisions namely, CIT v. Kohinoor Paper Products [1997] 92 Taxman 316 (MP), Mallige Medical Centre (P) Ltd. v. Jt. CIT [2015] 61 taxmann.com 298 (Kar), Kostub Investment Ltd. v CIT [2014] 45 taxmann.com 123 (Delhi), CIT v. Naidunia News & Networking P. Ltd. [2012] 23 taxmann.com 422(MP), Hindustan Hosiery Industries v. First ITO [1983] 5 ITD 349 (Bom Trib.) and 209 ITR 383 (Bom), and Kashiram Radhekrishan v. CIT [1985] 155 ITR 609 (Raj).

In view of the above, it was submitted that the expenses on education of the appellant is driven by commercial expediency and is wholly and solely for furtherance of the business of the assessee. Hence, these expenses may be allowed.

12. The ld. CIT DR is heard who has relied on the order of the lower authorities and submitted that once a search u/s 132 is carried out, it is incumbent upon the AO to assess or reassess the income of the assessee in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. The AO had no discretion but to assess or reassess the total income of the assessee as per the provisions of Section 153A of the Act. It was further submitted that the educational expenses are purely personal in nature and no nexus has been established by the assessee with his business activities and thus, the disallowance has been rightly made and confirmed by the ld CIT(A). He accordingly supported the order of the lower authorities.

13. We have heard the rival submissions and pursued the material available on record. A search and seizure action was carried out in case of the assessee's group on 5.09.2011. The original return of income for the financial year 2009-10 relevant to impugned assessment year 2010-11 was filed on 10.10.2010 and the last day of issuing notice section 143(2), being six months from the end of the financial year in which return has been filed, has not expired on the date of search i.e. 5.09.2011. Thus, it is clear that the assessment proceedings were pending as on 5.09.2011 i.e. the date of search as the time limit for

issuance of notice u/s 143(2) has not expired. As per section 153A of the Act, once a search and seizure action is carried out, the AO has to assess or reassess the total income of the assessee in respect of 6 years immediately preceding the assessment year relevant to the previous year in which a search is conducted or requisition is made. In case the assessment is pending on the date of search, the same shall be abated as per proviso to U/s 153A(1) of the Act and the AO is free to assess the income of the assessee as regular assessment. However, in case of completed assessment and not abated due to initiation of search u/s 132 or making of requisition u/s 132A, the AO has to reassess the total income of the assessee and therefore, the assessment already completed can be tinkered with or disturbed where any incriminating material is found and seized during the course of search or requisition as case may be indicating undisclosed income of the assessee. Therefore, it is a settled legal preposition that in case of completed assessment, the scope and jurisdiction of the AO to reassess the total income of the assessee u/s 153A is limited only to the extent of the income disclosed by the incriminating material found and seized during the search and seizure action. However, in respect of the pending assessments which shall be abated as per proviso to U/s 153A(1) of the Act, the AO is free to assess the income of the assessee as part of regular assessment and there is no requirement that the same shall be based on incriminating material found and seized during the search and seizure action. In the instant case, where the assessment proceedings were pending at the time of search, we therefore donot find any legal infirmity in action of the Assessing Officer in assessing the income of the assessee by making the disallowance of

education expenses u/s 37(1) based on enquires conduced during the course of assessment proceedings. Therefore, ground no. 1 of the assessee's appeal is dismissed.

14. Now coming to the merits of addition made by the Assessing officer. As per ld CIT(A), the assessee was pursuing B.Sc(Hons) in business management from CASS business school, London during the period 2006-09 and M.Sc in finance from Imperial college of London during the period 2010-2011 which are not specialized courses *per se* meant for the trading of bullion and base metals. Further, it was held by the ld CIT(A) that every claim of deduction cannot be allowed U/s 37 of the Act as the assessee's claim falls under the category of personal in nature and the assessee has also failed to provide direct nexus between the general business management courses pursued and trading of bullion and base metal business. As per the ld Counsel, it has been held in a plethora of judgments that any expense that goes towards better understanding and/or management of one's business has the desired nexus with his business and is an expense allowable u/s 37 of the Act. It has also been held that it is not for the AO to step into the shoes of a businessman and dictate to him how he should run his business.

15. The question for consideration therefore is where the assessee, an individual, who is engaged in the business of trading in bullion and base metal through his sole proprietorship concern, incurs expenditure on his own education whereby he pursues graduate i.e, B.SC (Hons) course in management during the period 2006-09 and post graduate course i.e, M.Sc during 2010-11, whether such expenditure can be

allowed as expenditure incurred wholly and exclusively for the purposes of his business for the impugned assessment year 2010-11 or the same is in nature of personal expenditure, which is not allowable while computing taxable business income from such sole proprietorship concern, in terms of provisions of section 37 of the Act which reads as under:

> ***"37.*** *(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

16. In case of Kohinoor Paper Products (supra), one of the partners of the assessee firm, after obtaining M.Sc degree, proceeded to USA for higher studies and joined Western Michigon University and the expenses incurred on his education were claimed as spent on foreign tour expenses. The same was disallowed by the Assessing Officer and confirmed by the ld. CIT(A). On appeal, the Tribunal allowed the deduction of entire expenditure and in that context, the Hon'ble Madhya Pradesh High Court has held as under:

> *"8. In the instant case, the Tribunal concluded that after completion of studies, the aforesaid person kept himself engaged in the business of the firm and his higher education in USA and the experience gained by him, proved beneficial to the firm. The Tribunal found that the subsequent events also established the intention and purpose of sending him to return with better education and greater experience.*

9. We are satisfied that the Tribunal committed no error in reaching the conclusion which is not shown to be perverse in any manner. We find that the expenditure so incurred was not in the nature of capital expenditure or for personal purposes. It was expended wholly and exclusively for the purpose of business of the assessee. That being so, such amount was properly allowed in computing the income chargeable under section 28 of the Act."

17. It is thus seen that in the aforesaid case, the assessee is an existing partnership firm which was carrying on business and one of its partners who has acquired basic education in field of B.Sc and M.Sc and was working with the firm has proceeded aboard for higher studies and after completion of study, he has come back and his education experience proved beneficial to the firm. In the instant case, we find that the facts are distinguishable and therefore, the decision doesn't support the case of the assessee. As submitted by the assessee before the ld CIT(A) and as we have noted above, we find that the assessee joined the graduation course during the period 2006-07 and he continued pursuing the said course for a period of three years from 2006 to 2009 and has claimed to have started the business of bullion and base metal trading from the assessment year 2009-10 onwards. So we find that even prior to the start of his business, the assessee had joined the basic graduation course, therefore, at the relevant point of time when the expenditure was incurred, at least during the first two years of the

basic graduation course, the business of the assessee was not even set-up and commenced its operations. Therefore, the very basis of claiming the whole expenditure for the 3 years graduation course in the year under consideration is not clear where the business of the assessee has not even started and therefore, the question of establishing nexus with his business doesn't arise for consideration. Further, it is unclear as to how the whole of expenditure for three years graduation course has been claimed during the year under consideration as typically, the course fee is deposited at the beginning of the academic session and two of the academic years clearly falls prior to year under consideration. Further, post graduate course i.e, M.Sc in finance was pursued during the period 2010-11. It is again unclear as to how the assessee was running his business and at the same time, pursuing the course. Further, what is the basis of claim of such an expenditure during the impugned assessment year i.e, 2010-11 where the claim prima facie suggest that it relates to subsequent assessment year 2011-12 going by the fact that the course was pursued during the period 2010-11 which falls under the assessment year 2011-12. Another distinguishing feature is that in case of Kohinoor paper products, it was a case of a partnership firm where the concerned partner had already completed his graduation and post-graduation and for pursuing further studies, he was sent abroad, however, in the instant case, the assessee is an individual and for pursuing the graduation course, he has spent the money which is more like laying the foundation for his own future career and is thus clearly in the realm of personal expenditure rather than expenditure in the realm of business expenditure where the business has not been set-up and

thus, the question of allowability of the same under section 37 doesn't arise for consideration. What is therefore relevant is not just the ultimate benefit or utilization of such expenditure for business purposes but what is equally relevant is that the point in time when the expenditure was incurred, the business of the assessee should have been set up which however, is not the case in the instant case.

18. Looking at the matter from perspective of allowability under section 35D, we find that even the provisions of section 35D doesn't come to the aid of the assessee. The provisions of section 35D which talks about expenditure before commencement of business, though applies equally to an assessee, being a company and an assessee, other than a company, however, it talks about specified catergories of expenditure as defined in sub-section 2 to section 35D and the present expenditure in form of education expenditure doesn't fall in such specified expenditure.

19. Once the business has been set up even though in an individual sole propertership capacity and thereafter, where the assessee wishes to pursue higher studies with an objective of gaining enhanced knowledge which will eventually help him in advancement of his business, one may argue that the expenditure has the nexus with his business and is thus a business expenditure even though as part of such an exercise, he is gaining personal knowledge, enhances his skills and experience, and adds to his intangibles and *curriculum vitae*. The reason for the same is that

the prime motive for incurring such an expenditure will be to aid and enhancement the business activities by virtue of such knowledge, and as part of the same, where the assessee adds to his personal intangibles, the same will not result in re-characterising the business expenditure as personal in nature. However, this is not the case before us as at the relevant point of time when the expenditure was incurred, the business of the assessee has not even started. However, the same may be relevant in context of post graduate course i.e, M.Sc in finance which was pursued during the period 2010-11 and therefore, relevant for subsequent assessment year and not for the impugned assessment year which the assessee may pursue, if so advised.

20. Now, coming back to another decision relied upon by the ld AR in case of Naidunia News and Networking (P) Ltd. (supra). In that case, facts of the case were that the assessee company was engaged in the business of printing and distribution of newspapers and magazines. The assessee claimed expenses on foreign travelling and higher studies in printing technology for one of its employees who was working as an Assistant Manager (Printing) who was also son of Ex-director of the company. The Tribunal allowed the claim of the assessee holding that the person was an employee of the assessee and he was sent abroad to acquire the advance knowledge of latest printing technology which was directly related with the business of the assessee company. In that factual background, the Hon'ble Madhya Pradesh High Court affirmed the finding of the Tribunal and held that the Tribunal has recorded a factual finding

that the person was in employment with the company not only before going but even during the period, he was undertaking study in printing technology at London and has also returned from London. It was accordingly held that the expenditure in question was wholly and exclusively for the purpose of business of the assessee company. As we held above, what is therefore relevant is not just the ultimate benefit or utilization of such expenditure for business purposes but what is equally relevant is that the point in time when the expenditure was incurred, the business of the assessee should have been set up. In the instant case, the assessee has not even started his business when we joined the B.Sc (Hons) course and therefore, the expenditure relating to the period prior to the start of the business cannot be allowed and that too, in the impugned assessment year. Therefore, this decision again does not support the case of the assessee.

21. In case of Kostub Investment Ltd. (supra), the assesee company incurred expenditure on higher education on an employee, who happens to be the son of one of the directors of the assessee's company, for undertaking an MBA course in UK. The assessee explained to the AO that the said person was a graduate having completed his B.Sc (Hons) from Delhi University and working with it for a salary of Rs 10,000 and since he was a brilliant student, and the company was in need of Manager (marketing) who could study the mood of investment market and the prospects taking into consideration the economy of India and other advanced countries and also an individual who could also take decisions with respect to

investment in shares and securities, the Board of Directors in the meeting held on 10.02.2005 took a conscious decision to send him pursuing the course of MBA from UK and on coming back to India after completing of study, he will serve the company at least for 5 years and in the event of breach of bond, suitable action for recovery of the amount would be taken against him. In that factually background, the Hon'ble Delhi High Court has held at para 8 to 10 of its order which reads as under:-

> *"8. This Court has considered the materials on record. There can be no doubt that the burden of showing that expenditure would be wholly and exclusively for the purpose of business under Section 37(1) is upon the assessee and that personal expenditure cannot be claimed as business expenditure. The question is whether these twin requirements are said to have been satisfied in the circumstances of this case. The first is what are the materials on record? The assessee furnished its resolution authorizing disbursement of the expenses to fund Dushyant Poddar's MBA. It secured a bond from him, by which he undertook to work for five years after return within a salary band and he had in fact worked after graduating from the University for about a year before starting his MBA course. In Natco Exports (supra), the student had applied directly when she was pursuing her graduation. There was a seamless transition as it were between the chosen subject of her undergraduate course and that which she chose to pursue abroad. In the present case, the facts are different. Dushyant Poddar was a commerce graduate. The assessee's business is in investments and securities. He wished to pursue an MBA after serving for an year with the company and committed himself to work for a further five years after finishing his MBA. There is nothing on record to suggest that such a transaction is not honest. Furthermore, the observation in Natco Exports (supra) with respect to a policy appears to have*

been made in the given context of the facts. The Court was considerably swayed by the fact that the Director's daughter pursued higher studies in respect of a course completely unconnected with the business of the assessee. Such is not the case here. Dushyant Poddar not only worked but – as stated earlier – his chosen subject of study would aid and assist the company and is aimed at adding value to its business.

9. Whilst there may be some grain of truth that there might be a tendency in business concerns to claim deductions under Section 37, and foist personal expenditure, such a tendency itself cannot result in an unspoken bias against claims for funding higher education abroad of the employees of the concern. As to whether the assessee would have similarly assisted another employee unrelated to its management is not a question which this Court has to consider. But that it has chosen to fund the higher education of one of its Director's sons in a field intimately connected with its business is a crucial factor that the Court cannot ignore. It would be unwise for the Court to require all assessees and business concerns to frame a policy with respect to how educational funding of its employees generally and a class thereof, i.e. children of its management or Directors would be done. Nor would it be wise to universalize or rationalize that in the absence of such a policy, funding of employees of one class – unrelated to the management – would qualify for deduction under Section 37(1). We do not see any such intent in the statute which prescribes that only expenditure strictly for business can be considered for deduction. Necessarily, the decision to deduct is to be case-dependent.

10. In view of the above discussion, having regard to the circumstances of the case, this Court is of the opinion that the expenditure claimed by the assessee to fund the higher education of its employee to the tune of Rs.23,16,942/- had an intimate and direct connection with its business, i.e. dealing in security and

investments. It was, therefore, appropriately deductible under Section 37(1)."

22. In the aforesaid case, the employee was working with the assessee company and went abroad for pursuing MBA course which the Court held to have an intimate and direct connection with the assessee's business. However, the facts are clearly distinguishable in the instant case, where the assessee pursued the graduation course when even the business has not started and what to speak about intimate connection with the business. Thus, this decision again doesn't support the case of the assessee.

23. In case of Mallige Medical Centre (P.) Ltd.(supra), the assessee company claimed a sum of Rs. 5,00,000/- spent on the education of daughter of the managing director of the company. It was submitted that she was committed to work for the assessee after successful completion of her studies and after successful completion of studies, she came back and worked in the assessee company. She was paid a sum of Rs. 20,000/- per month as salary before she was sent for higher studies and after returning, she is being paid Rs. 30,000/- per month. In that factual background, the Hon'ble Karnataka High Court has held as under:-

"6. In the instant case, before expenditure was incurred, the daughter had acquired a degree in medicine. She was employed. Apart from the fact that she is the daughter of the Managing Director and the Chief Executive, she was an employee of the assessee. She was sent outside the country for acquiring higher educational qualification, which would improve the services,

which the assessee is giving to its patients. It is in this context, the sum of Rs.5,00,000/- is spent. That is not in dispute. After acquiring the degree, she has come back and she is working with the assessee. She was paid Rs.20,000/- per month as salary, before she was sent to higher education and after returning she is being paid Rs.30,000/- per month. Merely because she happens to be the daughter of the Managing Director and the Chief Executive, it cannot be said that the money is spent by her parents out of love and affection for higher education of their daughter. She was an employee of the assessee, in the field, in which, she has acquired degree. They wanted her to specialize in Radiological Investigations and therefore, she was sent abroad for acquiring the knowledge. After acquiring the additional knowledge, she has come back and she is working with the assessee. Therefore, there is a direct nexus between the expenses incurred towards her education, with the business, which the assessee is carrying on. In that view of the matter, following the aforesaid judgment, we hereby set-aside the impugned orders passed by all the three authorities and direct the assessing authority to allow deduction of the said expenses. The substantial questions of law is answered in favour of the assessee and against the revenue."

24. In the aforesaid case, it is again a case of an existing employee which has acquired the basic degree and the company which is enaged in medical business wanted her to specialize in Radiological Investigations and therefore, she was sent abroad for acquiring the knowledge. The facts are again clearly distinguishable in the instant case, where the assessee pursued the graduation course when even the business has not started and what to speak about intimate connection with the business.

25. In case of Hindustan Hosiery Industries vs. ITO (Supra), the assessee firm claimed as business expenditure, the amount spent on sending one of its partners to the United States for training in business management. The ITO disallowed the claim on the ground that the training had nothing to do with the business of manufacture and sale of hosiery goods carried on by the assessee firm which was affirmed by the ld. Commissioner (Appeals) and on further appeal, the Coordinate Bench at Mumbai allowed the claim of the assessee holding that training in modern business management would be beneficial to carrying on the business of assessee firm. We have gone through this decision and this decision again doesn't support the case of the assessee as the facts are clearly distinguishable in the instant case. What is relevant is not just the ultimate benefit or utilization of such expenditure for business purposes but what is equally relevant is that the point in time when the expenditure was incurred, the business of the assessee should have been set up which however, is not the case in the instant case.

26. In light of above discussions and in the entirety of facts and circumstances of the case, the claim of education expenditure of Rs 1,11,35,190/- has been rightly disallowed by the Assessing officer and confirmed by the ld CIT(A) and we donot see any infirmity in the said orders and no interference is called for. The matter is accordingly decided against the assessee and in favour of the Revenue. In the result, ground no. 2 of assessee's appeal is dismissed.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 11/03/2020.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 11/03/2020.
*Santosh
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Harshvardhan Johari, Jaipur.
2. प्रत्यर्थी/ The Respondent- DCIT, Central Circle- 3, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 654/JP/2017}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar