

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 73 OF 2016

The Pr. Commissioner of Income Tax-10 .. Appellant.
v/s.
M/s. Holcim Services (South Asia) Ltd. .. Respondent.

Mr. Arvind Pinto, Advocate for the Appellant.
Mr. Nitesh Joshi with Mr. Jas Sanghavi i/by Prompt Legal, Advocates for
the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.**
DATE : 25th April, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 11.3.2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 11.3.2015 is in respect of Assessment Year 2008-09.

2 The Revenue has raised the following questions of law for our consideration:-

“(1) Whether on the facts and circumstances of the case and in law, the Tribunal is justified in upholding the decision of CIT(A) in deleting the disallowance of SOFTWARE EXPENSES OF Rs.38,90,369/- treated by the AO as capital expenditure without appreciating that this software resulted in enduring benefit to the assessee ?

(2) *Whether on the facts and circumstances of the case and in law the Tribunal is justified in upholding the decision of CIT(A) in deleting the disallowance of miscellaneous expenses of Rs.7,82,250/- treated by the AO as capital expenditure without appreciating that this expenditure was incurred on account of onetime occupation Health & Safety (OH&S) measures and thereby resulting in enduring benefit to the assessee ?*

(3) *Whether on the facts and circumstances of the case and in law the Tribunal is justified in upholding the decision of CIT (A) in deleting the disallowance of Rs.72,14,652/- u/s 40a(ia) of the Act ?”*

3 Regarding Question (1):

(a) The impugned order of the Tribunal dismissed the Revenue's Appeal before it by holding that the amount of Rs.38.90 Lakhs paid by it to CA (India) Technologies Private Limited for purchase of computer software was revenue in nature. This by upholding the finding of the Commissioner of Income Tax (Appeals) [CIT(A)] that the software purchased was to upgrade the software to solve the specific problems of user faced by the respondent. Thus, holding these expenses were on account of purchase of software which brings greater efficiency in the functioning of the appellant's business and was, therefore, revenue in the nature.

(b) Mr. Pinto the learned counsel appearing for the Revenue submits that payment of Rs.38.90 Lakhs made to CA (India) Technologies Private Limited resulted in Respondent having an enduring benefit through the

use of the software. This he points out has been specifically so held by the CIT (Appeals) whilst holding that the purchase of software was revenue in nature. Thus, it is submitted that once the benefit is of enduring nature it should not be allowed as revenue expenditure but held to be capital in nature.

(c) We find that in this case both the CIT (Appeals) as well as the Tribunal have rendered a finding of the fact that the software purchased from M/s. C.A.India Technologies Pvt. Ltd. brought about better efficiency in the appellant's business as it enabled it to meet specifically user problem faced by the Respondent-Assessee. The impugned order also records the fact that in view of fast changing technology, software has to be regularly updated so as to keep pace with the changing technology. On the aforesaid facts the view taken by the Tribunal that the expenditure of Rs.38.90 Lakhs is on Revenue account is an entirely possible view. So far as the Revenue's grievance that once the CIT(A) has recorded the fact that benefit obtained is of enduring nature ipso facto it must be held to be capital and not revenue in nature is contrary to the decision of the Supreme Court in **Empire Jute Co. Ltd. v. Commissioner of Income Tax** reported in **124 ITR Page 1**. In the above case, while dealing with a similar submission, the Court has observed as under:

“.....There may be cases where expenditure, even if incurred for

obtaining advantage of enduring benefit, may, none the less be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only whether the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

(d) In the light of the above position in law, the view taken in fact by the CIT(A) and the Tribunal is an entirely possible view. Therefore, the Question as proposed at Sr.No.(1) does not give rise to substantial question of law. Thus, not entertained.

4 **Regarding Question No.(2):**

(a) The impugned order of the Tribunal has held that the expenditure of Rs.7.82 Lakhs incurred towards consultancy fees, video shooting for training etc in respect of occupation, health and safety measure for the benefit of its employees to foster a safe working environment was revenue expenditure. It upheld the finding of the CIT(A) that the expenditure was incurred to ensure smooth functioning of its activity by ensuring accident free environment.

(b) The grievance of the Revenue is that the expenditure incurred on occupational, health and safety measures was onetime expenditure and gave enduring benefit to the assessee. Thus, capital in nature.

© We find that both the CIT (Appeals) and the Tribunal have rendered a finding of fact that the expense of Rs.7.82 Lakhs incurred to ensure good health and safety of its employees and to provide accident free environment. The test of one time payment of payment or not is not the sole test to determine the nature of expenditure. So also the test of enduring benefit in this case would not apply for the reason that the expenses assist in providing an hassle free environment for smooth running of business. The expense does not add to or expands the profit making apparatus of the Respondent as held by the decision of the Apex Court in **Empire Jute Co. Ltd. (Supra)**. In the above facts, the view taken by the CIT(A) and the Tribunal that the expenditure of Rs.7.82 Lakhs is in revenue field is a possible view.

(d) Thus, this question also does not give rise to the any substantial question of law. Thus, not entertained.

5 **Appeal admitted** on the substantial question of law at No. (3).

6 Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings

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relating to the present appeal available, to be produced when sought for by the Court.

- 7 Mr. Joshi learned Counsel waives service for the Respondent.
8 To be heard along with Income Tax Appeal No.1338 of 2015.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)