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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13.09.2011

Judgment delivered on: 04.11.2011

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ITA Nos. 1344/2009 and 1363/2009

COMMISSIONER OF INCOME TAX

.....APPELLANT

Vs

M/S AMWAY INDIA ENTERPRISES

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Mr. Abhishek Maratha and Ms Anshul Sharma, Advocates.

For the Respondent: Mr. M.S.Syali, Sr Advocate with Ms. Mahua Kalra, Ms. Husnal Syali and Mr. Rahul Sateija, Advocates.

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

RAJIV SHAKDHER, J

1. The captioned appeals pertain to the years 2001-2002 and 2002-2003. The said appeals involve two issues: The first issue being: the treatment to be accorded to expenditure incurred by the assessee on purchase of software applications. These applications being: MS Office Software, Anti Virus software, Lotus Notes Software and Message Exchange applications. The assessee in respect of these applications acquired a licence to use the said

applications on payment of consideration. The said expenditure has been disallowed by the Assessing Officer in each of the assessment years by treating the expenditure as one incurred on capital account. Accordingly, depreciation at the rate of 25% was allowed to the assessee. The assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)]. The CIT(A) while sustaining the order of the Assessing Officer, allowed depreciation at the rate of 60%. This resulted in both the assessee and the revenue being aggrieved. Consequently, cross appeals were filed by both the assessee and the revenue.

2. The second issue, with which authorities below were concerned, was with regard to the treatment to be accorded to the expenditure incurred by the assessee on improvements carried out in respect of premises held on lease: situate in Delhi, Mumbai and Kolkata. The assessee, who is in the business of direct selling of various products ranging from personal and home care products to cosmetics, nutrition and wellness products; had at the relevant point in time, taken on lease, premises, in the aforementioned cities, for setting up a chain of distribution across the country. In respect of the said premises, expenses were incurred by the assessee on flooring, partition, wiring, false ceiling, roofing, air-conditioning unit and duct, electric wiring, laying network for setting up computers and, on purchase of furniture.

Both the Assessing Officer and CIT(A) disallowed the expenses on the

ground that they were incurred on capital account. Recourse was taken to the provisions of explanation 1 to Section 32 of the I.T.Act, 1961 (in short I.T.Act)

3. In respect of both issues, the assessee filed an appeal with the Income Tax Appellate Tribunal (in short the Tribunal), while the revenue was in appeal before the Tribunal on the aspect of the enhancement of rate of depreciation by the CIT(A).
4. The Tribunal allowed the appeal of the assessee and restored the matter to the file of the A.O. with the direction to follow the decision of its Special Bench, constituted in the meanwhile, in regard to the first issue. As regards the second issue, the Tribunal allowed the entire expenditure incurred on improvement of leasehold premises save and except that which was incurred on air-conditioning unit(s) and furniture.
5. It is against these findings of the Tribunal that the revenue has filed the present appeals before us seeking to raise substantial questions of law.
6. The first issue, in our opinion, has been considered and decided against the revenue in a judgment delivered by us passed in ITA Nos. 1110/2006 and 1111/2006 titled CIT Vs. M/s Asahi India Safety Glass Ltd.
- 6.1 As regards the second issue, we find that in *CIT Vs. Hi Line Pens Pvt. Ltd* [2008] 306 ITR 0182, the court was called upon to interpret the expression “repairs of the premises”. The court had thus to determine as to whether the expenses incurred on repairs were in the nature of revenue expenditure

or, had brought into existence, an asset, of enduring nature. The court concluded that the expenditure was in the nature of revenue expenditure. A distinction was also made between the terms “repairs” and “current repairs”. The court held that the term “repairs” was wider than the expression “current repairs” as used in Section 30(a)(ii).

- 6.2 In ***CIT Vs. Escorts Finance Ltd*** [2006] 205 CTR (Delhi) 574, which is an earlier judgment of this court, the court was called upon to decide as to whether the expenses incurred on improvement of leasehold premises, were in the nature of revenue expenditure, as contended by the assessee. The court sustained the contention of the assessee and allowed the deduction claimed under Section 37(1) of the I. T. Act. The court noticed the dicta of the judgments of the Bombay High Court in the case of ***CIT vs David Mills Ltd.*** (Income Tax Reference No. 17/1950 decided by Chagla C.J. and Tendolkar, J. on 10.10.1950) and ***Mevor Mills ltd. vs CIT*** (Income Tax Reference No. 36/1950 decided by the same Bench, on 30.03.1951) wherein, it has been observed that in ascertaining whether an expenditure incurred is made on revenue account or otherwise one would have to bear in mind the nature of the expenditure, that is, was it incurred for maintenance or preservation of an asset or was it expended otherwise. It thus concluded that if the expenditure was of the former kind it would be in the nature of a revenue expenditure. In the very same judgment, the observations made in ***Gulamhussein Ebrahim Matcheswalla vs CIT***

(1974) 97 ITR 24 (Bom) were also noticed whereby, the court rejected the submission that it is the amount spent on repairs which would determine the nature of the expenditure.

- 6.3 Therefore, having regard to the principles laid down in the aforementioned judgments and the nature of the expenses in issue, we are of the view that the revenue's appeal, on this issue, as well would have to be rejected.
7. In view of the above, the captioned appeals are dismissed leaving the parties to bear their own costs.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL, J

NOVEMBER 04, 2011
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