IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPEAL NO.107 OF 2010
(Commissioner of Income Tax-IV vs. M/s. Newquest Corporation Ltd.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ..

DATED : SEPTEMBER 1, 2015

Heard Adv. Parchure with Adv. Mohta for appellant and Adv. Dewani for respondent.

This Court on 17/2/2015 passed the following order :

> "Heard Shri Anand Parchure, learned Counsel for the appellant.
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> Though two questions are raised, as gratuity liability rises after each completed year of service, the learned Counsel upon instructions restricts the challenge to ground no.1. Submission is, the fact that the project Health Care had no relation with the business activity of assessee looked into by the Assessment Officer, has not been considered by the ITAT.
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> Notice, returnable on 17.3.2015."

Thus, today we have heard respective Counsel on the proposed question no.1 in paragraph 6 of the appeal memo as substantial question of law. We find from facts disclosed that the assessee had been dealing even prior to amalgamation with manufacture and sale of Spirulina Alga powder. The Company wanted to expand that business and took some steps in that direction. It incurred expenditure of Rs.26,04,000/- for extension of business of Spirunila Division. The facts show that this expansion did not actually materialise and the new project never started.

The Income Tax Appellate Tribunal has accepted this expenditure of Rs.26,04,000/- on new project as revenue expenditure. According to Department, as new project never started, it cannot be treated as revenue expenditure and must be accepted as capital expenditure.

Adv. Dewani for respondent submits that as new project never started, there cannot be any revenue expenditure in relation to such project and expenditure made by the assessee for starting it, therefore, must be treated as revenue expenditure of assessee.

We find that submissions made by Adv. Dewani are correct. The proposed project never started and hence, the question was not in relation to revenue expenditure of that project. The question was of expenditure by assessee for starting that project. The Income Tax Appellate Tribunal has rightly applied its mind.

No substantial question of law arises. Hence, the appeal is dismissed.

JUDGE JUDGE

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