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

Income Tax Appeal No.148 of 2013
(The Commissioner of Income Tax-I, Nagpur .vs. Caldery India Refractories Ltd., Nagpur)

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

CORAM : B.P.DHARMADHIKARI & A.P.BHANGALE, JJ.

DATE : 27th FEBRUARY, 2015.

Heard Mr.Anand Parchure, learned Counsel for the appellant.

Submission is expenditure incurred by the assessee for the proposed joint venture must be treated as capital expenditure. He relies upon the facts disclosed in paragraph nos. 5 and 6 of the Assessment order.

We find that the I.T.A.T. has looked into relevant legal provisions in the case of **CIT. vs. Priya Village Roadshows Limited reported in (2011) 332 ITR 594** to hold that whether a new business/asset comes into existence or not is a relevant factor. If there is no creation of new asset, then the expenditure incurred would be of revenue nature. However, if the new asset comes into existence which is of enduring benefit, it would be capital in nature. In the light of this finding of the Delhi High Court, the ITAT has also distinguished the Judgment of Gujarat High Court in the case of **Shahibag Entrepreneurs Pvt. Ltd. vs. CIT** reported in **(1994) 210 998 (Guj.).**

Here, the facts show that no new asset has come into existence and the expenditure incurred was for obtaining feasibility report and part of expenditure was towards visits of the Officials of ICICI Security Company.

As such, after considering the material on record, a proper finding of fact has been reached.

Expenditure incurred or its appropriation is not in dispute. As such, we do not find any substantial question of law arising in the matter. The appeal is, therefore, dismissed. No costs.

JUDGE **JUDGE**

jaiswal