

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.290 of 2015
Date of decision: 18.1.2016**

Principal Commissioner of Income Tax, Gurgaon

.....Appellant

Vs.

**M/s Pulsar Knowledge Centre Pvt. Limited, 15th Floor, Tower-B, DLF
Cyber Terrace, Building No.5, DLF Cyber city, Phase II, Gurgaon.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Tejender K.Joshi, Advocate for the appellant-revenue.

Mr. Sachin Bhardwaj, Advocate for the respondent-assessee.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 4.2.2015, Annexure A.III passed by the Income Tax Appellate Tribunal, Delhi Bench 'F' New Delhi (in short, "the Tribunal") in ITA No.5223/DEL/2014 for the assessment year 2009-10, claiming following substantial questions of law:-

"1. Whether in the facts and circumstances of the case, the ITAT was correct in granting the relief of ₹ 88,85,332/- by treating the expenditure incurred on procurement of research reports as revenue in nature?

2. Whether in the facts and circumstances of the case, the ITAT was correct in ignoring the fact that the research reports would

have enduring benefits to the business of the assessee?

3. Whether in the facts and circumstances of the case, the ITAT was correct in ignoring the fact that the assessee company wanted to extend its operations and look for means for attracting potential customers and to venture into new markets?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee company was incorporated on 16.4.2003. Its business is to provide business advisory and related knowledge based services to diverse sectors across the globe. Return declaring income of ₹ 91,67,000/- was filed by the assessee online on 26.9.2009 which was processed under section 143(1) of the Act. The case was selected for scrutiny. Notice under Section 143(2) of the Act was issued to the assessee. Assessment was completed under section 143(3) of the Act at an income of ₹ 1,80,85,330/-. Addition of ₹ 88,85,332/- was made by treating huge expenditure incurred on acquiring research reports from M/s Zensar Technologies Limited for extension of assessee's business as capital expenditure. The assessee had claimed this expenditure as revenue expenditure in nature. The Assessing Officer vide order dated 26.11.2012, Annexure A.1 treated this expenditure as capital expenditure by holding that the assessee had incurred this expenditure for the purpose of extension of its business. It was also held that the expenditure had been incurred with a view to bring into existence an intangible asset in the form of research reports about the market which will result in advantage of enduring nature for the benefit of the business of the assessee in subsequent years. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated

21.7.2014, Annexure A.II, the CIT(A) upheld the addition made by the Assessing Officer. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 4.2.2015, Annexure A.III, the Tribunal allowed the appeal relying upon the decision of the Delhi High Court in **CIT vs. Priya Road Show Limited**, (2011) 332 ITR 594 (Del.) holding that the expenditure incurred in respect of same business is allowable as revenue expenditure even if it is for expansion of the business. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The dispute herein is whether the expenditure incurred by the assessee for obtaining research report was rightly held to be revenue in nature. Admittedly, the assessee is engaged in the business of providing advisory services. It incurred expenditure of ₹ 1,01,54,665/- for obtaining research reports. According to the Assessing Officer, huge expenditure on acquiring research reports was incurred and the same was held to be expenditure of capital nature on acquisition of intangible assets. Since the expenditure had been treated as capital expenditure, depreciation at the rate prescribed for the intangible assets @ 12.5% (i.e. half of 25%) was allowed. The CIT(A) upheld the said view and held that as the expenditure incurred by the assessee company was for expansion of business by means of acquisition of research reports, it was of capital nature. The issue before the Tribunal was whether the expenditure incurred by the assessee of ₹ 1,01,54,665/- for obtaining research reports was capital expenditure or revenue expenditure. The Tribunal relied upon the decision of the Delhi High Court in **Priya Road Show Limited's** case (supra) holding that

expenditure incurred for carrying out technical and financial feasibility is revenue expenditure even if the assessee drops the said project. After considering the overall facts and circumstances of the case, the Tribunal held that the expenditure was for expansion of business and therefore such expenditure on research reports obtained in the course of advisory services was revenue expenditure. The mere fact that part of the expenditure was incurred for marketing did not change the nature of expenditure. Consequently the appeal was allowed. The relevant findings recorded by the Tribunal read thus:-

“14. The Hon'ble Delhi High Court in the case of *CIT vs. Priya Road Show Limited* held that expenditure incurred for carrying out technical and financial feasibility is revenue expenditure, even if the assessee dropped the said project. In holding so, the Hon'ble High Court has held as under:-

“One of the judgments on which the Tribunal based its decision is of this court i.e. *CIT vs. Modi Industries Limited (No.3) (1993) 200 ITR 341*. In that case the assessee company which was manufacturing various commodities like sugar, vanaspati, soap, paints and varnish, torch and lantern, started manufacturing a new commodity viz. special alloy wire and billets. Debentures were issued for raising funds for this new steel unit and the assessee incurred expenditure for issuing of debentures. The question was whether the expenditure incurred by the assessee in the year in which the unit had not started working was allowable as business expenditure. The Appellate Tribunal found that the management of the new unit and the earlier business were the same and there was unity of control and a common fund and held that the manufacture of special alloy and billets was an expansion of the assessee's business and not a new business and

allowed deductions of expenditure. The decision of the Tribunal was affirmed by the High Court holding that all the assessee's bid was to start manufacturing a new commodity. In the larger sense, the business of the assessee remained the same viz. the business of manufacture. The assessee was already manufacturing diverse items and a new item was added to this business. The Tribunal had found that there was complete unity of control and that there was a common fund which was most material for testing whether the business was the same. In considering whether the two businesses run by an assessee are the same business, what is important is that unity of control and interlacing of the two businesses and not the nature of the business.

A harmonious reading of the aforesaid two judgments of this Court namely *Triveni Engineering Works Limited*, (1998) 232 ITR 639 on the one hand and *Modi Industries Limited (No.3) (1993) 200 ITR 341*, on the other would clearly demonstrate that one has to keep in mind the essential purpose for which such an expenditure is incurred. If the expenditure is incurred for starting a new business which was not carried out by the assessee earlier, then such expenditure is held to be of capital nature. In that event it would be irrelevant as to whether project really materialized or not. However, if the expenditure incurred is in respect of the same business which is already carried on by the assessee, even if it is for the expansion of the business, namely, to start a new unit which is the same as earlier business and there is unity of control and a common fund, then such an expense is to be treated as business expenditure. In such a case whether new business/asset comes into existence or not would become 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, then such expenditure would be of capital nature.”

15. In the above judgment, it was held that the expenditure incurred in respect of same business is allowable as revenue expenditure, even if it is for expansion of the business. In the instant case here too admittedly the expenditure even as per the revenue is for expansion of business and therefore such expenditure on research reports obtained in the course of advisory services is revenue expenditure. The assessee has declared income from advisory services after obtaining report of ₹ 1,06,47,974/- which is in excess to the expenditure incurred. Mere fact that part of the expenditure was incurred for marketing does not change the nature of expenditure.”

5. The view adopted by the Tribunal being a plausible view based on factual position and the relevant case law on the point, does not warrant any interference by this Court. Learned counsel for the appellant-revenue has not been able to show any illegality or perversity in the impugned order. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 18, 2016
'gs'

(Raj Rahul Garg)
Judge