$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 656/2018 & CM APPL 23524/2018

SATINDER KAPUR ..... Appellant

Through Mr.Monish Panda, and Mr.Shobhit Nanda, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 49(1) ..... Respondent

Through Mr.Ruchir Bhatia, Sr.Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **30.05.2018**

The assessee/appellant's grievance in this appeal proceeding under Section 260A of the Income Tax Act, 1961 (hereafter as the Act) is that the ITAT fell into error in not allowing the expenditure claimed under Section 37 of the Act. The assessee had claimed ₹39,01,750/- as litigation/settlement expenses. The facts are that the appellant was managing director of M/s Indian Magnetics Limited, which had obtained substantial advances from a consortium of banks and Financial Institutions, for which he stood personal guarantee in his capacity as managing director. Upon that company's inability to repay its duties, recovery proceedings were initiated, which led to determined liability. At that stage, the appellant switched gear and became a lawyer in order to settle the dues of the company and discharge his personal guarantee. He entered into One Time Settlement with the bankers and paid up the agreed amount. He claimed ₹39,01,750/- as litigation expenditure under Section 37 of the Act which was concurrently disallowed by the lower authorities. The ITAT after recounting these facts was of the opinion that the expenditure could not be said to be wholly and exclusively laid out for the purposes of business under Section 37 of the Act. The ITAT also took note of the judgment of this Court in *Shanti Bhushan v. Commissioner of Income Tax* 336 ITR 26.

It is urged on behalf of the assessee that if the litigation expenses claimed under Section 37 of the Act were not paid it would have been impossible for him to carry on his profession as an advocate and that in these circumstances, the amount was wholly and exclusively laid out for business. He also cited *Shanti Bhushan (supra)* to say that there could be circumstance for the expenses claimed by a professional, though seemingly personal, entitled deduction under Section 37 of the Act. What is evident from the discussion of facts by the lower authorities in this case is that the appellant initially was a business entrepreneur, i.e. managing director of M/s Indian Magnetics Ltd. That assessee's liability led to the appellant – in his capacity as the guarantor and entrepreneur, discharging its debt. The discharge of that liability was claimed by him to be business expenditure in relation to subsequent income generated through legal profession. In our opinion, such claim is clearly inadmissible. The kind of expenditure which a legal professional can legitimately and justly claim is entirely different from the basic expenditure which a commercial entity can claim. Moreover, the commonality sought to be urged, i.e. the persona of the assessee that obscures the fact is that the hat donned by the assessee in the past was of a business entrepreneur whereas he is now a legal professional; crossing of line is impermissible as the law stands today.

For these reasons, the Court is of the opinion that no substantial question of law arises.

Appeal is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 30, 2018
ndn