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

\+ ITA 52/2018

PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI
..... Appellant

Through None.

versus

MAIL TODAY NEWSPAPERS PVT. LTD. ..... Respondent

Through Mr. Sunil Aggarwal, Ms. Madhur Aggarwal and Mr. Uma Shankar, Advs.

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

O R D E R

% **17.01.2018**

The question of law urged in this appeal under Section 260A of the Income Tax Act, 1961 ('the Act') by the Revenue is with respect to the correctness of the Income Tax Appellate Tribunal's (ITAT) decision that Rs.9,37,29,000/-, which had been disallowed from the sales promotion expenditures by the Assessing Officer (AO), fell in the revenue stream rather than the capital stream. The assessee was engaged in the business of publication of newspaper and periodicals; its revenue is derived from the sale of publication and advertisements published in such newspapers. The assessee claimed expenditure to the tune of Rs.18.82 crores as sales promotion expenses. Justifying such expenses, the assessee relied upon various heads of its expenditures. The AO was of the opinion that the expenditure was unduly high for a new entrant and disallowed half the amount i.e.

Rs.9,37,29,000/-. It was held that the amount was in all probability, meant to create an asset i.e. brand of an enduring nature and thus, fell in the capital stream. The CIT(A) disagreed and set aside the AO's decision. The ITAT affirmed that judgment.

Learned counsel relied upon the judgment in *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, (1980) 124 ITR 1 (SC) to say that the ratio of that judgment fairly implies to lead to conclusion that the high degree of expenditure in this case and disallowed by the AO, actually meant creation of an asset or resulted in an enduring capital advantage to the assessee.

This Court is of the opinion that the concurrent findings on the question urged, are justified. As to the nature of advertising expenditure, the pointed decision of the Court in *Commissioner of Income Tax vs. Salora International*, (2009) 308 ITR 199 was decisive. The advertence to Empire Jute's case (supra), is not apt in the circumstances of the case. The Court further re-collects that later decision in *Alembic Chemical Works Co. Ltd vs. CIT*, (1989) 177 ITR 377 has cautioned the administrative authorities and the Courts from applying hitherto bright line test to expenditure resulting in a capital advantage based upon traditional notions.

For the foregoing reasons, no substantial question of law arises. Appeal is therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 17, 2018/rc