IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 409 OF 2017

Principal Commissioner of Income Tax-10,
Mumbai. … Appellant.
V/s.
J.P.Morgan Services India Pvt.Ltd. … Respondent.

Mr.Arvind Pinto for the appellant.
Mr.F.V.Irani i/b. Mr.Atul Jasani for the respondent

CORAM : AKIL KURESHI AND S.J.KATHAWALLA, JJ.

DATE : 1st July 2019.

P.C.:

This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). The following question is presented for our consideration:

> "Whether the expenditure incurred by the assessee at the time of starting of a new unit to explore future business in a country is a revenue expenditure or capital expenditure?"

2. The respondent- assessee had filed its return of income for the assessment year 2003-04. During the period relevant of the said assessment year, the assessee had incurred an expenditure of 4.21 crore and claimed the same as a revenue expenditure. The Assessing Officer was of the opinion that the expenditure was a capital expenditure and,

therefore, disallowed the same. The assessee carried the matter in appeal. The Commissioner (Appeals) dismissed the appeal upon which the assessee approached the Tribunal. The Tribunal by the impugned judgment allowed the assessee's appeal. The Tribunal was of the opinion that the expenditure was not incurred for setting up of new business but was for the purpose of improving the existing business of the assessee. The Tribunal concluded that the expenditure was for expansion of existing business. It was noted that the assessee was in the business of rendering IT enabled services and software development services to J.P.Morgan Chase Group Entities worldwide. The assessee had engaged M/s.Mckinsay & Co. as a consultant for project management study. The prime object of the said study was to enable the assessee whether it would be beneficial to step up the operations or to continue operating at the same level. In short, the objective of the study was for more efficient conduct of the assessee's business. In this context the Tribunal relied upon and referred to the decision of the Supreme Court in case of ***Empire Jute Co. Ltd. v. C.I.T.***, 124 ITR page-1 and held that the expenditure was revenue in nature.

3. We have heard learned counsel for the parties and perused documents on record. As noted, the Tribunal has come to the conclusion that the payment was for the purpose of obtaining a study report. The prime objective of the said study was to enable the assessee to do its existing business more efficiently. This expenditure was, thus, not for the purpose of creating new business. The Tribunal held that the expenditure did not result into any enduring benefit or bring into

existence a new asset. Even if, the expenditure made result into enduring benefit, in certain circumstances, as held by the Supreme Court in the case of ***Empire Jute Co. Ltd.*** (supra), this enduring test may break down. We, therefore, do not find any error in the view of the Tribunal. Income tax appeal is dismissed.

(S.J.KATHAWALLA, J.) (AKIL KURESHI, J.)