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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 651 OF 2017

Pr. Commissioner of Income Tax - 8

...Appellant

Versus

M/s. Rediff.com India Ltd.

...Respondents

Mr. Suresh Kumar for the Appellant.

Mr. Madhur Agrawal with Mr. Fenil Bhatt i/b. Kanga & Co. for the Respondent.

CORAM : K.R. SHRIRAM &
R.I. CHAGLA, JJ.
DATE : 29 SEPTEMBER, 2021.

(THROUGH VIDEO CONFERENCING)

ORDER :

1. In this case, the respondent had claimed a deduction of Rs.8,16,67,747/- on account of capital work-in-progress written off in computation of its income. Respondent had initiated many projects to enrich its website with an intention to add new features to the website and to enhance its existing products to keep its website updated. Respondent had spent substantial amounts on these projects under the head "capital work-in-progress". However, due to recession there was fall in revenue and respondent decided to conserve cash

flow and after reevaluating all on going projects decided to pursue only those projects which were critical for the purpose of its business in short run. Respondent identified the projects which were critical and decided to abandon those projects which were not expected to pay back. Respondent abandoned some of the projects which were incomplete at that point of time and claimed expenses pertaining to such abandoned projects as revenue expenses. The expenditure incurred were salary, professional fees, etc. which were revenue in nature and did not bring into existence any new asset. Detailed explanation was filed with the Assessing Officer.

2. Assessing Officer was not convinced with respondent's submissions and held that the expenditure was incurred for creation of new projects and these projects were capital assets of its business which were to yield enduring benefit. Assessing Officer also held that by parking such expenditure under the head "capital work-in-progress", respondent itself has admitted that those expenses were capital in nature. However the reduction in capital asset on account of abandoned project for incurring a capital loss cannot be set off or reduced from the income as revenue loss. Assessing officer, therefore, disallowed respondent's claim of writing off 'capital work-in-

progress’.

3. Unhappy with these findings of the Assessing Officer, respondent preferred an appeal before Commissioner of Income Tax (Appeals) [“CIT(A)”] who held that the expenditure on abandoned project cannot be allowed as revenue expenditure.

4. Respondent preferred an appeal before the Income Tax Appellate Tribunal (“ITAT”). The ITAT, by its decision dated 13th April 2016, set aside the order of CIT(A). The ITAT held that the expenses incurred were in connection with the existing business and admittedly were of routine nature like salary, professional fees, etc., and these expenses are otherwise clearly of revenue in nature. By observing that CIT(A) misread the judgment of the Jharkhand High Court in the case of ***CIT Vs. Tata Robins Fraser Ltd.***¹, the ITAT held that such expenses were allowable as revenue expenses. Paragraph 16 of *Tata Robins Fraser Ltd. (Supra)* reads as under:-

“16.....Substantially this is also a question of facts where an expenditure incurred by the assessee was of the revenue in nature or it was capital expenditure. However, in view of the fact

¹ (2012) 78 DTR 22.

that question has been framed and we have narrated the facts of the case including the break-up of the expenditure which includes the fee of Rs.2,57,335/- paid to the Architect and some expenses of Rs.46,379/- incurred on old capital work in progress which was abandoned and cost of damaged cabinets and that too, amounting to Rs.12,776/-, total expenditure including all three of the head is Rs.3,16,490/-. It is not in dispute that the project could not be accomplished because of the reason that the place where it was to be undertaken had a poor quality of soil and all the construction already damaged. The other articles bought by the assessee also got damaged and, therefore, in that fact situation, the Tribunal was fully justified in holding that such expenditure which may be pre-operational expenditure for a project can be treated to be a revenue expenditure actually and not a capital expenditure.....”

5. The ITAT also relied upon the judgment of this Court in ***CIT Vs. M/s. Manganese Ore India Ltd., Nagpur***².

6. We have, before us, a judgment of this Court in ***CIT-3 Vs. Idea Cellular Ltd.***³, where the Court held that where new cellular towers were constructed by cellular operator in addition to existing tower and no new business was set up, if project was abandoned, expenditure so far incurred would be allowed as business expenditure. When we brought this judgment to the notice of Mr.

2 Dated 11th February 2016 in Income Tax Reference No.150 of 1993.

3 (2016) 76 taxmann.com 77 (Bom.)

Suresh Kumar and observed that the facts in this case are also identical to the facts of the appeal at hand, Mr. Suresh Kumar as an officer of the Court, agreed. He also states that an SLP against this judgment is pending but there is no stay.

7. Therefore, the ITAT's view that if an expenditure is incurred for doing the business in a more convenient and profitable manner and has not resulted in bringing any new asset into existence, then, such expenditure is allowable business expenditure, is correct.

8. In our view, ITAT has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analyzed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

9. The appeal is devoid of merits and it is dismissed with no order as to costs.

[R.I. CHAGLA J.]

[K.R. SHRIRAM, J.]