

(2014) 364 ITR 605

Delhi High Court

Case No: I.T.A. Nos. 135, 437 and 447 of 2007

Commissioner of
Income Tax

APPELLANT

Vs

Television Eighteen
India Ltd.

RESPONDENT

Date of Decision: April 30, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 37, 37(1), 57(iii)

Citation: (2014) 364 ITR 605

Hon'ble Judges: Vibhu Bakhru, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Mayank Nagi, Advocate for the Respondent

Judgement

1. In respect of these appeals, the following common questions of law are framed:

(i) Whether the income tax Appellate Tribunal was right in holding that the entire expenditure incurred by the assessee on production of programmes which became part of news archives should be allowed as a revenue expense u/s 37 of the income tax Act, 1961, and should not be treated as incurred for creating a capital asset?

(ii) Whether the income tax Appellate Tribunal was correct in holding that the expenditure of Rs. 57,32,689 incurred on "CNBC expansion project" was allowable as revenue expenditure and not as capital expenditure? (arising out of the assessment year 1998-99)

As far as the first question, i.e., whether the expenditure towards creation of the news archives is concerned, the issue is covered by the decision of this court in I.T.A. No. 1624 of 2006 decided on April 29, 2014 (CIT v. Television Eighteen India Ltd. (No. 1) [2014] 364 ITR 597 (Delhi)). Accordingly, this question is answered in favour of the assessee and against the Revenue.

2. So far as the second issue, i.e., the expenditure towards the "CNBC expansion project" is concerned, the facts are that the assessee at the relevant time, i.e., up to April 1, 1999, was entitled to the airtime of 1.5 hours each day. The assessee sought to augment this capacity to 12 hours each day by paying required fee/consideration to the CNBC by making separate arrangement with the CNBC. This amended expansion of the existing business arrangement was not disputed by the Revenue, however, the expenditure for an amount of Rs. 57,32,689 incurred in respect of various items, i.e., salary, media professional charges, equipment hire charges and production expenses were disputed by the Revenue. The Assessing Officer disallowed the said expenditure and held that this expenditure resulted in a capital advantage of an enduring nature. The Commissioner of income tax (Appeals) set aside the findings of the Assessing Officer and the income tax Appellate Tribunal also rejected the Revenue's appeal. In this regard, the findings of the income tax Appellate Tribunal are as follows:

We have considered the facts of the case and rival submissions. Section 37(1) permits the deduction of expenditure, which is not personal of capital in nature, if it has been incurred wholly and exclusively for the purpose of business. A large number of cases exist to the effect that the material issue is the incurring of the expenditure and it is not necessary that there should be any corresponding receipt in the year of incurring of the expenditure. Thus, the words used in this section have wider amplitude than the words used in section 57(iii). The other issue is that treatment given to the expenditure in the books of account is not conclusive in the matter. The expenditure has to be allowed on the basis of incurring the expenditure and even if the same is not debited in the books, necessary correction has to be made while computing the income as held in the case of Kedarnath Jute Manufacturing Co. Ltd. (supra). The last issue is whether the expenditure was in the capital field or in the revenue field. The expenditure was incurred with a view to expand one and a half hours programme to 12 hours a day programme. It was in the existing line of business of the assessee. There is nothing on record to show that the finances for this programme were separately arranged or that control and management for this programme was separate and distinct from the existing programmes of the assessee. Therefore, the expenditure was incurred for carrying out the existing business more efficiently and with a view to generate more revenues. Thus, the expenditure was in the revenue field. No tangible asset was created by incurring the expenditure, which may lead to the inference that there was any stock-in-trade or that any benefit of enduring nature was obtained. It is a matter of fact that the formats and designs tend to become obsolete very fast in the present fast changing environment. Therefore, it is held that the assessee did not derive any benefit of enduring nature and the expenditure was incurred in the course of the business. Thus, it is held that the learned Commissioner of income tax (Appeals) was right in allowing the deduction of the expenditure.

3. It is contended by the Revenue that though this expenditure would result in the increase of potential revenue nevertheless the fact remains that such benefit was to accrue in the succeeding year. Therefore, as far as this year was concerned, the

expenditure had to be treated as one that could result in capital asset or had to necessarily be one resulting in a capital advantage. The learned counsel placed reliance upon [Assam Bengal Cement Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal, .](#)

4. At the outset, it is apparent that the findings of the Commissioner of income tax (Appeals) and the income tax Appellate Tribunal on this aspect are concurrent. After analysing the facts, it is discerned that no advantage of enduring nature has accrued to the assessee. On account of the expanded work and enhanced capacity, the assessee had incurred expenses to the tune of Rs. 9,75,559 towards the salaries of professionals, Rs. 42,28,600 towards hire charges and Rs. 2,40,000 towards media professional charges. The assessee had also incurred production expenses to the tune of Rs. 2,48,500. The very nature of this expenditure required it to be treated as one falling u/s 37(1) of the Act, i.e., compelled by the business purposes and not resulting in any enduring advantage requiring to be treated in the capital stream. For these reasons, the court is of the opinion that the question of law has to be answered in favour of the assessee and against the Revenue. The appeal has, therefore, failed and is dismissed.