

(2008) 10 DEL CK 0135

Delhi High Court

Case No: Income Tax A. No's. 621 of 2007 and 718 of 2008

Commissioner of Income Tax

APPELLANT

Vs

International Amusement Ltd.

RESPONDENT

Date of Decision: Oct. 21, 2008

Citation: (2009) 310 ITR 281 : (2009) 178 TAXMAN 295

Hon'ble Judges: Rajiv Shakdher, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Prem Lata Bansal, for the Appellant; Rakesh Gupta, Ashwani Taneja and Aarti Saini and Avds., for the Respondent

Judgement

I.T.A. No.718 of 2008

1. This appeal is directed against the Tribunal's order dated September 28, 2007, passed in I.T.A. No. 4405/Del/2005 relating to the assessment year 2002-03. The only issue that is sought to be raised is whether the payment made by the assessee to the Bijnor Steel and Alloys Pvt. Ltd. as part of the agreement was in the nature of capital expenditure or revenue expenditure. The payment was made by the assessee for the advice rendered by Bijnor Steel and Alloys Pvt. Ltd. on the materials and consumables to be applied on the steel structures of the rides and the methodology of application on site, without requiring shut down of the rides. The assessee was conducting rides at Appu Ghar at Pragati Maidan. The payment was also made for advice on application of techniques of predictive breakdowns so that the assessee can execute predictive maintenance of the structures from time to time in order to minimize the chances of unexpected breakdowns or public casualties at the amusement park (Appu Ghar). The Tribunal has applied the tests as laid down in [Empire Jute Co. Ltd. Vs. Commissioner of Income Tax](#), and has concluded that the payment has been made for technical advice relating to maintenance of the rides in the amusement park (Appu Ghar). The Tribunal also concluded that there was no evidence to show that any replacement or renewal of the rides or their component parts was affected. The Tribunal also noted that even

the warranty given by the Bijnor Steel and Alloys Pvt. Ltd. was only for six months. The Tribunal concluded that there was no addition in the capital field and the expenditure was incurred by the assessee in the interest of its business. Consequently, the Tribunal held that the expenditure was of a revenue nature and was not in the capital field.

2. The Tribunal has correctly appreciated the law as laid down by the Supreme Court in [Empire Jute Co. Ltd. Vs. Commissioner of Income Tax](#), and has applied that to the facts determined by it. No substantial question of law arises for our consideration. The appeal is dismissed.