

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

**INCOME TAX APPEAL NO. 892 OF 2014**

Commissioner of Income Tax-4 ... Appellant

V/s.

M/s. Reliance Supply Chain Solutions Ltd. ... Respondent

**WITH**

**INCOME TAX APPEAL NO. 948 OF 2014**

Commissioner of Income Tax-10 ... Appellant

V/s.

M/s. Reliance Foot Print Limited ... Respondent

- Mr.Ashok Kotangle a/w. Ms.Padma Divakar for the Appellant in ITXA/892/2014.
- Mr.Arvind Pinto for the Appellant in ITXA/948/2014.
- Mr.Percy Pardiwalla, Senior Counsel a/w. Mr.Raj Darak and Mr.P.C. Tripathi for the Respondent in both the appeals.

**CORAM : S.V. GANGAPURWALA AND  
A.M. BADAR, JJ.**

**DATE : 5<sup>th</sup> JULY, 2017.**

**PER COURT :**

1] In Income Tax Appeal No.948 of 2014, the Revenue has framed following question;

*“6.1 Whether the Tribunal was correct in its interpretation that Pre-operative expenditure of Rs.3,64,49,545/-*

*was revenue in nature?*

*6.2 Whether on the facts and in the circumstances of the case, the order of the Tribunal holding this to be revenue would not lead to a double deduction since the expenditure was shown as work in progress in the block of assets that would subsequently be eligible for depreciation?"*

2] Whereas, in Income Tax Appeal No.892 of 2014, the Revenue has framed following question;

*"6.1 Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the dis-allowance of Rs.2,88,72,441/- of Project Development Expenses made by the of Assessing Officer considering it as Capital Expenditure against assessee's claim to be considered it as Revenue expenditure u/s.37(1) of the Income Tax Act, 1961?"*

3] The gamut of the dispute between the parties is the nature of the expenditure viz. Whether it is a revenue expenditure or capital expenditure? The factual matrix is as under;

The Assessee had commenced his business and for expansion of his business had incurred expenditure. The Assessee claims that the expenditure to be revenue expenditure. Whereas, the

Assessing Officer held it to be a capital. The Commissioner (Appeals) and the Tribunal accepted the case of the Assessee holding it to be revenue expenditure. Aggrieved thereby, the Appellant filed the present appeal.

4] Mr. Pinto and Mr. Kontangle, the learned counsel for the Department strenuously contends that the Assessee itself had shown the same as a capital in its books of account. Thereby making its intention clear. The learned counsel further submits that the business had not exactly commenced. The expenditure for the purpose of acquisition of the assets would be a capital and cannot be termed to be a revenue expenditure. The Assessing Officer had rightly considered the said aspect. The learned counsel submits that the judgment of this Court in a case of *Commissioner of Income Tax vs. Kothari Auto Parts Manufacturers Pvt. Ltd., reported in [1977] C.I.T. 333*, is on a different premises and is not assist. The Tribunal has misconstrued the said judgment. Even the judgment in a case of *Commissioner of Income Tax, Gujrat II vs. Alembic Glass Industries Ltd., reported in [1976] C.I.T. 715*, the facts were different.

5] Mr.Pardiwalla, the learned Senior Counsel for the Assessee submits that the expenses were Revenue expenditure. It is not relevant as to how the Assessee shows the expenditure in the books of account. The expenses were in the nature of salaries, conveyance allowance and the same were necessarily in the nature of revenue expenditure.

6] We have considered the submissions canvassed by the learned counsel for the respective parties.

7] It is not relevant as to how the Assessee shows a particular income or expenditure in the books of account. In the present case, the Commissioner (Appeals) and the Tribunal has specifically on appreciation of factual matrix arrived at a conclusion that the expenditure are directly identifiable with the operations and maintenance of the existing stocks i.e. with regard to the payment of salary, travelling and conveyance allowance, telephone expenses, professional fees paid, audit fee and other miscellaneous expenses.

8] In view of the specific finding of fact arrived at by the Commissioner (Appeals) and the Tribunal, the Tribunal have held

the expenditure to be revenue expenditure. In case of *Kothari Auto Parts Manufacturers Pvt. Ltd.* (supra), this Court had specifically observed that separate computation of income and expenditure would be justified only when several distinct business are carried on, and not when the separate business activities were carried out by some person and when one set of account is maintained for all set of activities.

9] In the present case also, one set of account is maintained for the business activity by the Assessee. The Assessee had incurred expenditure on account of expansion of business and the Assessee had commenced the business as per the findings of the Commissioner (Appeals) and the Tribunal. The said findings are findings of the fact.

10] In view of the above, no substantial question of law arises. These Appeals, as such, stand dismissed. No costs.

(A.M. BADAR, J.)

(S.V. GANGAPURWALA, J.)