***** **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 30.01.2009

ITA 1152/2008

COMMISSIONER OF INCOME TAX .....APPELLANT

versus

SAMTEL COLOR LIMITED ..... RESPONDENT

Advocates who appeared in this case:

For the Appellant	:	Ms. Prem Lata Bansal, Mr.Mohan Prasad Gupta and Mr.Sanjeev Rajpal
For the Respondent	:	Mr Ajay Vohra & Ms Kavita Jha

CORAM :-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is an appeal preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') against the judgment dated 06.07.07 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') in ITA No.4037/Del/1999 in respect of assessment year 1996-97

2. The Revenue's appeal to this Court pertains to two issues. The first issue is related to allowance of depreciation to the assessee on the

enhanced cost of the asset on account of fluctuation in the rate of exchange on the last date of the accounting year. The second issue pertains to allowance of deduction in respect of money paid towards admission fee of clubs as revenue expenditure.

2.1 In our order dated 30.09.2008, we had concluded that insofar as the first issue was concerned it was covered by a judgment of a Division Bench of this Court in ***CIT vs. Woodward Governor India P. Ltd; (2007) 294 ITR 451 (Delhi).*** As regards the second issue we had fixed the matter for final disposal and directed the counsel for the parties to file synopsis containing brief submissions pertaining to the said issue. Accordingly, the counsel for the parties did the needful; whereupon they were heard and judgment was reserved in the matter on 03.12.2008.

3. The assessee has admittedly paid corporate membership fee to Indian Habitat Centre and Sports & Cultural Club, Noida amounting to Rs 5 lakhs and Rs 1 lakh respectively. The Assessing Officer disallowed the expenditure on the following grounds:-

(i) the expenditure did not bear any nexus with the business carried on by the assessee;

(ii) the expenditure was incurred for the benefit of employees or its Directors;

(iii) the expenditure did not enhance the image of the assessee or its products as its membership could not be used to advertise the products of the assessee; and

(iv) lastly, the expenditure resulted in benefit of an enduring nature.

3.2 Aggrieved by the same the assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [hereinafter referred to as the 'CIT(A)'].

3.3 It is pertinent to point out at this stage that the CIT(A); while recording the submission of the learned counsel for the assessee, that the, clubs had various facilities for conferences, business meetings, as well as, provision for multimedia exhibition also noted the fact that the Director and senior executives could also use the club facilities for their private purposes for which they would have to incur extra expenditure out of their own pockets. Thus based on the material placed before him the CIT(A) concluded that while the membership of the clubs did provide assessee a benefit which fulfilled the business purpose test, it also resulted in benefits to the Directors and executives in their personal capacity.

3.4 Accordingly, the CIT(A) directed the Assessing Officer to disallow 20% of Rs 6 lakhs and allow the balance amount as revenue expenditure

on the ground that the entire expenditure was not incurred for business purposes.

4. Since both the Revenue and the assessee were aggrieved by the order of the CIT(A) cross appeals were preferred against his order. The Tribunal after considering the submissions made as well as authorities cited before it returned a finding of fact that the expenditure incurred by the assessee was to obtain corporate membership of the clubs which entitled it to sponsor specified number of employees to enjoy the benefits of the clubs for which separate payments had to be made. It further concluded that the membership by itself did not confer any enduring benefit on the assessee. The Tribunal noted the fact that corporate membership itself meant it was for the benefit of the assessee and not for any particular employee as it had a right to nominate and substitute an employee at any point of time. In these circumstances it concluded that since membership allowed the employees to interact with its customers the expenses were for business purposes and, therefore, there was no reason to disallow the expenditure either wholly or in part.

5. Having heard the learned counsel for the Revenue as well as the assessee we are of the view that the impugned judgment of the Tribunal deserves to be upheld for the following reasons:-

5.1 The expenditure incurred towards admission fee, admittedly, was towards corporate membership. As correctly held by the Tribunal, the nature of the expenditure was one for the benefit of the assessee. The

'business purpose' basis adopted for eligibility of expenditure under Section 37 of the Act was the correct approach. This is more so in view of the Tribunal's findings that it was the assessee which nominated the employee who would avail the benefit of the corporate membership given to the assessee.

5.2 The other hurdle for qualification of the expenditure under Section 37 of the Act is that expenditure incurred should not be on capital account. The Assessing Officer came to the conclusion that the expenditure was of a capital nature based on a fallacious reasoning that the expenditure was of an enduring nature and hence on a capital account. It is well settled that an expenditure which gives enduring benefit is by itself not conclusive as regards the nature of the expenditure. We may add that even lump sum payment, which was the case in the instant matter, is not decisive as regards the nature of the payment. See observations in ***Empire Jute Co Ltd vs. CIT; (1980) 124 ITR 1 (SC)*** as also the judgment of the Division Bench of this Court in ***CIT vs. J.K.Synthetics; ITR Nos.139/1988 & 202/1989.*** The true test for qualification of expenditure under Section 37 of the Act is that it should be incurred wholly and exclusively for the purposes of business and the expenditure should not be towards capital account. In the instant case, as discussed above, the admission fee paid towards corporate membership is an expenditure incurred wholly and exclusively for the purposes of business and not towards capital account as it only facilitates smooth and

efficient running of a business enterprise and does not add to the profit earning apparatus of a business enterprise.

5.3 To support the Revenue's contention that the impugned expenditure is on capital account the Learned counsel, Ms Prem Lata Bansal has cited the judgment of the ***Framatone Connector OEN Ltd vs. DCIT; (2006) 157 Taxmann 116***. The said judgment is based on the Supreme Court judgment in the case of ***Punjab State Industrial Development Corporation Ltd vs. CIT; (1997) 225 ITR 792.*** The judgment of the Supreme Court on which the Kerala High Court has relied heavily dealt with the issue with regard to fee paid to the Registrar of Companies for increase of authorised capital, that is, whether such an expense was in the nature of revenue or capital expenditure. The Supreme Court came to the conclusion that since the fee was paid to the Registrar of Companies for increase in the capital base of the assessee it was in the nature of capital expenditure. According to us the ratio of the afore-mentioned Supreme Court judgment is not applicable to the expenses incurred on an admission fee for corporate membership. We respectfully disagree with the ratio of the judgment of the Kerala High Court. In turn, we respectfully follow the ratio of the judgment of the Division Bench of this Court in ***CIT vs. Nestle India Ltd; (2008) 296 ITR 682*** and that of the Bombay High Court in the case of ***Otis Elevator Co (India) Ltd vs. CIT; (1992)195 ITR 682***.

6. In view of the above, in the aforesaid circumstances we are of the opinion that the impugned judgment as indicated above, deserves to be upheld. In the result, the appeal is dismissed.

RAJIV SHAKDHER, J

January 30, 2009 **BADAR DURREZ AHMED, J**
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