

Healthcare, insurance and other businesses of 'Max India' held as one business under Income-tax

Summary – The High Court of Punjab & Haryana in a recent case of Max India Ltd., (the Assessee) held that Expenditure incurred by assessee commensurate with business of assessee including health care business which constituted one business only would be allowable as revenue expenditure

Where order of Commissioner (Appeals) in case of assessee for previous assessment year had resulted in higher WDV of asset, and said order was affirmed by Tribunal in appeal, depreciation for current assessment year had rightly been worked out with reference to WDV computed as a result of WDV worked for previous year

Facts

- The assessee filed its return of income for relevant assessment year 1999-2000 declaring the income at Rs. 9.08 crores under section 115J.
- On scrutiny assessment, the Assessing Officer made disallowance of Rs. 6.71 crores on account of expenses for setting off new business and fee paid and Rs. 3.09 crores on account of excess depreciation allowance.
- On appeal, the Commissioner(Appeals) allowed the appeal of the assessee and deleted the additions made by the Assessing Officer.
- On further appeal, the Tribunal dismissed the appeal filed by the revenue.
- On appeal by revenue to the High Court:

Held

Whether different business/ventures carried on by assessee including healthcare business constituted one business or separate businesses?

- It would be advantageous to notice the legal position first. The Apex Court in *CIT v. Prithvi Insurance Co. Ltd.* [\[1967\] 63 ITR 632](#), considering whether the business of life insurance and the business of general insurance could be regarded as same business, had observed that a fairly adequate test for determining whether the two constituted the same business was whether there was any inter-connection, any interlacing, any inter-dependency, any unity at all embracing those two business. It was held that the inter-connection, interlacing, inter- dependence and unity were furnished in this case by the existence of common management, common business Organization, common administration, common fund and a common place of business.
- The principle of law enunciated in *Prithvi Insurance Co. Ltd's case (supra)* was reiterated by the Supreme Court in *Produce Exchange Corpn. Ltd. v. CIT* [\[1970\] 77 ITR 739](#) by holding that while determining two or more lines of businesses of the assessee to be same 'business' or 'different

businesses', regard has to be made to that there is common management of the main business and other lines of businesses, unity of trading organization, common employees, common administration, a common fund and a common place of business. It was further held that for evaluating the 'same business', the test of unity of control and not the nature of business is to be applied. Another judgment of the Supreme Court in the case of *Veecumsees v. CIT* [[1996](#)] [220 ITR 185/86 Taxman 243](#) had expressed similar view.

- Applying the test in the instant case, the Commissioner(Appeals) after appreciating the evidence produced on record had observed that various businesses carried on by the assessee including healthcare do constitute the same business of the assessee.
- The Tribunal on appeal had affirmed the said findings. The revenue was unable to demonstrate with reference to any material that the conclusion of the Commissioner (Appeals) and the Tribunal was erroneous, perverse or based on misreading of evidence on record which may warrant interference by this Court. Thus, it is concluded that the businesses carried on by the assessee including healthcare business would fall within the ambit of being the same business of the assessee.

Whether expenditure incurred for setting off new business and fee paid was revenue or capital in nature?

- There was no serious dispute with regard to expenses incurred by the assessee like salaries and wages, rent, travelling and conveyance, communication, business promotion advertisement and miscellaneous/other expenses, that these were revenue in nature. However, the amount of Rs. 6.71 crores claimed as business expenditure by the assessee included professional fees of Rs. 4.46 crores paid to Mckinsey & Co. The revenue urged that this payment was capital in nature and was not admissible as revenue expenditure. The Commissioner(Appeals) had held that in so far as genuineness of this payment is concerned, there was no controversy that it was actually paid to Mckinsey & Co. After appreciating the material, it was further recorded that this expenditure was revenue in nature. The Tribunal had affirmed the said findings.
- Nothing could be demonstrated by the revenue that the aforesaid conclusion was unsustainable in law which would persuade this Court to interfere with the said findings. Therefore, the same are affirmed.