

## Membership fees paid to stock exchange is capital in nature: HC

**Summary – The High Court of Delhi in a recent case of Abhipra Capital Ltd., (the Assessee) held that Subscription fee paid by share broking company for obtaining membership in National Stock Exchange was capital expenditure**

### Facts

- The assessee-company was primarily dealing with shares in stock markets, merchant banking and other financial services. The assessee, in furtherance of its business, acquired membership of the National Stock Exchange and paid an amount of Rs. 5 lakh and treated payment as revenue expenditure.
- The Assessing Officer found that the payment made by the assessee was non-recurring in nature and had given rise to an enduring benefit and would qualify as capital expenditure.
- On appeal, the Commissioner (Appeals) concluded that expenditure made by the assessee, was for the expansion of its business and should not be treated as capital expenditure.
- On second appeal, the Tribunal concluded that expenditure was made for the addition of capital assets of the assessee and expenditure was made to acquire full rights to trade as a member and set aside order of the Assessing Officer and allowed appeal of the revenue.
- On appeal to the High Court:

### Held

- It is an accepted and admitted position that Rs. 5 lakhs, was paid by the appellant-assessee to acquire membership of the National Stock Exchange. This was a fixed amount, which was paid at one time and is not an annual subscription fee. Without payment of the said amount, the appellant-assessee could not have acquired membership of the National Stock Exchange. On acquisition of membership, the appellant acquired right to trade in shares and to act as a broker. Deposit of this amount was *sine qua non* for issue of and entitlement to the broker's card. With the said card and having acquired membership, the assessee could enjoy benefits and privileges of a member which would enable it to carry on trade in said capacity.
- Section 2(14) of the Act defines 'capital asset' as property of any kind held by the assessee, whether or not connected with the business or profession, but does not include any stock-in-trade, consumable stores or raw materials held for the purpose of business or profession. It is not the case of the appellant-assessee that the membership deposit was stock-in-trade, consumable or raw material for the purchase of business. The membership card was an asset or a property which the petitioner had acquired on non-refundable payment of Rs. 5 lakhs. It was on acquisition of the said

card/membership that the appellant could carry on business as a stock broker, subject to other compliances including annual fee payment.

- Right to transfer in the present facts, would not be the determinative test, for there can be capital assets on which there is restriction on transfer. Expenditure to acquire a capital asset would not become a revenue expense or consumable material because there are restrictions or strict stipulations on when transfer of capital asset can be made. There cannot be any doubt that one time and lump sum payment made to acquire membership right by a company or person engaged in business of trading in stocks, brings into existence an asset or an advantage of enduring nature. Membership card is not an addition to the stock-in-trade or consumable stock. This expenditure enabled the assessee to acquire an asset to earn income in that year and in future. It was a payment by the appellant assessee to acquire a source which enabled the appellant-assessee to do business. Membership brought into existence an advantage for all times. In the context in question, Rs. 5 lakhs represents money paid to procure a permanent right in the form of a license to carry on trade. This expenditure would not be revenue but capital in nature.
- Even if it is accepted that the appellant was earlier a sub-broker it would not make any difference. Business as a broker is different from that of a sub-broker. The payment made was an expense incurred to acquire a new right and source of earning. By becoming a broker, the appellant had acquired a different right and new asset with acquisition of the membership ticket. This cannot be treated as mere improvement of the earlier business. Business can also be extended and expanded by making addition capital investment.
- The expenditure made was for acquiring and bringing into existence an asset or advantage of enduring benefit and not for running business to produce more profits. The question raised, it was observed, should be answered by adopting common sense and not legalistic and theoretical approach.
- In the context of the present case, 'enduring benefit' test and 'once and for all payment' test would be the most appropriate and proper tests to apply, though one should accept that there are exceptions to the said principles and these tests might break down in a given case. The expenditure incurred was for acquisition of property and rights of a permanent character. The enduring advantage was in the capital field.