

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	ITA No.1992/Del/2014		
	A.Y. : 2010-11		
DCIT, CIRCLE 6(1), NEW DELHI ROOM NO. 318, CR BUILDING, IP ESTATE, NEW DELHI	VS.	M/S MEDIA TRANSASIA INDIA LTD., C-31, MAYFAIR GARDENS, NEW DELHI - 110 016 (PAN: AAACM3542L)	
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>	

Department by : Sh. P. Dam Kanunjnja, Sr.  
DR

Assessee by : None

Date of Hearing : 20-06-2016

Date of Order : 01-07-2016

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed the present appeal against the  
impugned order dated 22/1/2014 passed by the Ld.

Commissioner of Income Tax (Appeals-IX), New Delhi  
pertaining to assessment year 2010-11 on the following  
grounds:-

*1. Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) erred in deleting the disallowance of Rs. 17,66,407/-, made by the A.O. on account of prior period expenses, without appreciating the fact that these bills were raised in F.Y. 2009-10 but the services were actually provided in the F.Y. 2008-09 and thus the liability was incurred in A.Y. 2009-10?*

*2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,10,300/-, made by the A.O. by treating the Legal and Professional Charges paid to M/s Consort Capital Pvt. Ltd. as Capital Expenditure, without appreciating the fact that the above expenditure was incurred in relation to the raising of private equity and thus was evidently a capital expenditure and claim of the assessee that it was a*

*commission payment will not change the nature of payment?*

*3. Whether on the facts and circumstances of the case & in law, the Ld.CIT(A) erred in deleting the disallowance of Rs. 2,16,78,914/- made by the A.O. by treating the above expenditure as Capital Expenditure, without appreciating the fact that the above payment was made on account of investment made by the assessee in the JV company and thus the payment was inherently capital in nature?*

*4. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*

*5. That the grounds of appeal are without prejudice to each other.*

*6. That the appellant craves leave to add, alter, amend or forgo any ground (s) of the appeal raised above at the time of the hearing.*

2. The facts in brief are that the assessee company is engaged in the business of Publishing of Magazines, trading in

books / magazines and filed its return of income declaring a loss of Rs. 1,47,99,406/- on 27.9.2010 which was processed by the AO u/s. 143(1) of the I.T. Act, 1961 (hereinafter referred as the Act). The case of the assessee was taken for scrutiny and a notice u/s. 143(2) and 143(1) of the Act was issued to the assessee. In response to the same Ld. AR of the assessee appeared and filed requisite details, books of accounts, bills and vouchers. The AO disallowed the expenses of Rs. 9,53,254/- on account of legal and professional charges being prior period in nature and Rs. 8,13,160/- being advertisement and publicity expenses thus totaling to Rs. 17,66,407/- on the ground that this expenses does not relate to the year under consideration and added back to the total income of the assessee company.

2.1 Secondly, an expenditure of Rs. 1,10,300/- has also been disallowed being capital in nature and added back to the income of the assessee. The Assessee has incurred these expenses on account legal and professional charges paid to M/s Consort Capital Pvt. Ltd. as upfront fees in raising funds

through private equity. The AO treated these expenses as capital expenditure and added to the income of the assessee.

2.2 Thirdly the issue in dispute in the present appeal is regarding the disallowance of Rs. 2,16,78,914/- which the assessee has incurred on account of advt. and publicity expenses during the year under consideration which include Rs. 1,52,31,327/- paid to INX News Private Limited; Rs. 55,95,519/- paid to NDTV Lifestyle Ltd. and Rs. 8,52,060/- paid to UTV News Limited totaling to Rs. 2,16,78,914/-. According to the Assessee these expenses were incurred on Advt. and creation of (Blender) magazine. These expenses are made as per the Joint Venture arrangement entered into on 12.2.2009 between M/s Dennis Publishing International Ltd. and the Assessee Company. The assessee has given its explanation by way of reply to the AO vide letter dated 12.10.2012 explaining the nature of expenses, but the AO did not agree with the reasons mentioned by the assessee and added the amount of Rs. 2,16,78,914/- to the total income of the assessee being capital in nature and completed the assessment by making various other additions which are not in dispute in

the present appeal, vide order dated 26.2.2013 passed u/s. 143(3) of the I.T. Act, 1961. Aggrieved with the aforesaid additions, assessee filed the appeal before the Ld. First Appellate Authority who vide impugned order dated 22.1.2014 has deleted the additions in dispute by partly allowing the appeal filed by the Assessee.

3. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

4. At the time of hearing Ld. DR relied upon the order of the AO and reiterated the contentions raised by the Revenue in the grounds of appeal.

5. None Appeared on behalf of the assessee. However, notice by RPAD was issued to the assessee for 20.6.2016 and in response to the same, neither the assessee nor its Authorized Representative/Counsel appeared and nor filed any application for adjournment. Keeping in view of the facts and circumstances of the present case, we are of the view that no useful purpose would be served. Therefore, in the interest of justice, we are deciding the issue in dispute exparte assessee, after hearing the Ld. DR and perusing the records.

6. We have heard the Ld. DR and perused and considered the relevant records available with us especially the orders passed by the revenue authorities, we are of the considered view that the Ld. First Appellate Authority has deleted the addition of Rs. 17,66,407/- made by the AO on account of prior period expenses because the Bills were dated 1.4.2009 and the expenses were made in the Month of January & February, 2009. Before the First Ld. Appellate Authority assessee pleaded that since the assessee has received these bills during the relevant assessment year and made the payment subsequently and the AO has also not doubted the genuineness of expenses. Therefore, these expenses are allowable. In support of the contention, assessee has also cited the decision of the Hon'ble Supreme Court of India in the case of Kedarnath Jute Manufacturing Company Ltd. vs. CIT (1971) 82 ITR 363 (SC).

7. After going through the facts and circumstances of the present case and the orders passed by the revenue authorities alongwith the judgment of the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Company Ltd. (Supra),

we are of the considered view that the assessee has received the Bills during the relevant assessment year and making the payment subsequently. Keeping in view of the decision of the Hon'ble Supreme Court of India in the case of Kedar Nath (Supra), the Ld. First Appellate Authority has rightly deleted the addition in dispute, hence, there is no need to interfere in the well reasoned finding given by the Id. First Appellate Authority, therefore, we uphold the order of the Ld. CIT(A) on the issue involved in ground no. 1 and decide the same in favour of the Assessee and against the Revenue.

8. Apropos addition of Rs. 1,10,300/- being legal and professional charges to M/s Consort Capital Private Ltd. The assessee company had consulted M/s Consort Capital Private Limited for raising Private Equity from outsources or sale of shares. The AO had treated the payment of Legal and Professional Charges of Rs. 1,10,300/- to M/s Consort Capital as Expenditure of Capital nature. However, Ld. CIT(A) has held that since the expenditure is in nature of commission paid and cannot be treated as capital expenditure at par with the expenditure incurred during initial capital raised. In the



background of the aforesaid discussions, we are of the view that the Ld. CIT(A) has rightly held that the commission paid could not be treated as capital expenditure, hence, we do not find any infirmity in the well reasoned order passed by the Ld. CIT(A) on this issue, therefore, we uphold the same and decide the ground no. 2 in favour of the Assessee and against the Revenue.

9. Apropos addition of Rs. 2,16,78,914/- by treating this expenditure as capital expenditure. The AO treated a sum of Rs. 2,16,78,914/- incurred on Advt. & Publicity incurred for "promotion of blender" for which rights were sold to M/s Dennis Media Transasia Publishing Private Limited. The said expenses was treated as investment of the assessee in the joint venture company and hence was disallowed as capital expenditure. However, Ld. CIT(A), has observed that as per the factual correction submitted by the assessee, the actual expenditure incurred on promotion of Blender was Rs. 1,20,86,122/- and not the amount of addition made by the AO. As per the joint venture agreement, the assessee received an income of Rs. 2.30 Crore for selling of publishing Right of

Blender against which expenditure are incurred. The assessee was the original holder of publishing rights of the blender magazine. As per the joint venture agreement with M/s Dennis Publishing International Ltd., the assessee was supposed to develop and promote the Blender magazine and transfer it to the joint venture company subsequently. In view of the above, Ld. CIT(A) has rightly held that the assessee spent on advertisement and promotion and transferred the publishing right to the joint venture company that is to M/s Dennis Media Transasia Publishing Pvt. Ltd. for a sale consideration of Rs. 2.30 crore. We further find cogency in the observations of the Ld. CIT(A) that in the P&L account for the relevant financial year, the amount of Rs. 2,30,21,,523/- was shown below the line which is taken as the profit on sale of fixed asset in the computation of income. Similarly, gain on sale of rights amounting to Rs. 2,24,23,100/- was offered in the computation income as short term capital gain. In view of the above, it was rightly held by the Ld. CIT(A) that disallowance of expenditure ignoring the income from selling of publishing right is not justifiable and addition was rightly deleted, which does not need any interference on our part, hence, we uphold the action

of the Ld. CIT(A) on this issue and decide the ground no. 3 in favour of the assessee and against the Revenue.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 01/07/2016.

Sd/-

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 01/07/2016*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches