

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.6797/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2010-11)

Reliance Lifestyle Holdings Ltd., 5 th floor, Court House, Lokmanya Tilak Marg, Dhobi Talav, Mumbai-400002	बनाम/ Vs.	Dy.Commissioner of Income Tax Range 3(1), Aayakar Bhavan, M.K.Road, Mumbai-400020
-----------------------------------------------------------------------------------------------------------------------------------	----------------------------	-----------------------------------------------------------------------------------------------

स्थायी लेखा सं./ PAN :AADCB1864F

अपीलार्थी ओर से / Assessee by	Shri Vijay Mehta
प्रत्यर्थी की ओर से/Revenue by	Shri B S Bist

सुनवाई की तारीख / **Date of Hearing** : **24.10.2016**
घोषणा की तारीख / **Date of Pronouncement** : **13.12.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM

This is an appeal filed by the assessee challenging the order of Id.CIT(A)-7, Mumbai dated 14.8.2014 for the assessment year 2010-11.

2. Facts of the case are that the assessee filed return of income on 26.9.2010 declaring loss of Rs.9,95,45,407/-. The case of the assessee was selected for scrutiny and statutory notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. Thereafter, the assessment was

completed vide order dated 22.3.2013 passed under section 143(3) of the Act by assessing the loss at Rs.8,53,15,535/- by making disallowance of Project Development Expenditure amounting to Rs.1,05,89,163/- and adding provisions for leave encashment of Rs.36,40,709/-. The matter was carried before the Id. CIT(A) who dismissed the appeal of the assessee and therefore the assessee is before us by raising following grounds of appeal:

"Ground no.1.

(i) The Commissioner of Income tax (Appeals) {hereinafter; referred to as CIT (A)} erred in confirming the disallowance of claim for deduction u/s 37(1) in respect of revenue expenditure incurred during the year amounting to Rs.1,05,89,163/-.

(ii) The Learned CIT (A) failed to appreciate that the expenditure having been incurred for carrying-on the business and being of revenue nature is eligible for deduction u/s 37(1).

(iii) The appellant prays that the deduction of Rs. 1,05,89,163/- as claimed by it be allowed.

Ground No.2:

i) The Commissioner of Income tax (Appeals) {hereinafter referred to as CIT(A)} erred in confirming the disallowance of claim for deduction u/s 43B(f) in respect of reversal of provision of Leave Encashment during the year amounting to Rs. 36,40,709/-.

(ii) The Learned CIT (A) failed to appreciate that the claim of Leave Encashment was already disallowed u/s 43B in the earlier years when originally provision of Leave encashment were made and reversal of such Leave- encashment provision has the effect of reducing current year's expenditure and therefore needs to be excluded from the current year income.

(iii) The appellant prays that the deduction of Rs. 36,40,709/- as claimed by it be allowed."

3. The issue raised in ground no.1 is against the confirmation of addition of Rs.1,05,89,163/-by the Id.CIT(A) as made by the AO under section 37(1) of the Act.

4. The facts in brief are that the AO during the course of assessment proceedings found that the assessee has claimed an amount of Rs.1,05,89,163/- as revenue expenditure which were shown as Project Development Expenditure included under the head Work-In –Progress (WIP) however while filing the return of income claimed as revenue expenditure and accordingly assessee was asked to justify the claim which was replied by the assessee vide letter dated 15.3.2013. The assessee submitted before the AO that the business of the assessee was that of trading in merchandising , goods and services and during the year incurred various revenue expenditure in connection with the business amounting to Rs.1,05,89,163/-, the details whereof was also furnished before the AO and is reproduced as under for better understanding of the issue:

S.No.	GE description	Amount	Amount
1	Payment to and provisions for employees Salaries and wages Employees welfare and other amenities Cont. to emp. retirement benefit	65,24,792 2,95,896 3,15,319	
			71,36,007
2	Rent	4,51,209	
3	Rates and taxes	21,19,115	
4	Travelling and conveyances expenses	77,850	
5	Legal and professional fees	7,24,839	
6	Other interest paid	56,421	
7	Gen and admin charges	23,722	34,53,157

	Total of revenue expenditure debited under the head project development expenditure and claimed under section 37(1)		1,05,89,164
--	---------------------------------------------------------------------------------------------------------------------	--	-------------

The assessee further submitted that such expenses though of revenue in nature were debited in the books of account under the head Project Development Expenditure and were appearing in the balance sheet as part of WIP. The assessee further submitted that such expenses were of revenue in nature and have been incurred during the year and accordingly claimed as such as there was no provision of claiming revenue expenditure in any particular year other than that in which these were incurred and these expenses were claimed as revenue expenditures under section 37(1) in the computation of income which was also furnished before the AO. However, the AO did not find the submissions and contentions of the assessee as convincing and substantive on the ground that the expenses were shown under the project development expenditure and it was further shown under the WIP in the Balance sheet and no transfer entries were made in the books of account which proved conclusively that the expenditure were incurred on a project /activity which was not completed during the year and accordingly disallowed and added the same to the income of the assessee. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority who also dismissed the appeal of the assessee on this issue by observing and holding as under :

"I find that "Schedule-O"[Notes on Accounts] of the assessee read's as under:

"The company is in the process of setting' up various facilities for conducting its business. The expenditure incurred during the implementation period for bringing the project in the condition of its intended use, is treated as "Project Development Expenditure" pending capitalization and included in Capital Work-in-progress. Capitalization is done in the ratio of phased implementation. The necessary details as per Part II of Schedule VI to the Companies Act, 1956 have been disclosed below :

Project Development Expenditure Account (included under Capital Work-in-progress

	2009-10	2008-09
<i>Opening Balance</i>		
Add:		
(i) Payment to and provisions for employees	71,36,007	-
(ii) Rent	4,51,209	-
(iii) Rates and taxes	21,19,115	-
(iv) Travelling and conveyances expenses	77,850	-
(v) Legal and professional fees	7,24,839	-
(vi) Gen and admin charges	23,722	-
(vii) Interest and finance charges	56,421	-
	1,05,89,164	
Less	-	-
Capitalized during the year		
Closing balance	1,05,89,164	

It has been held by the Honble Supreme Court in the, case of Arvind Mills Ltd. v. CIT(1992) 197 ITR 422,429,431 (SC) that "the expenditure incurred on a capital asset does not lose character of capital expenditure and does not become a revenue expenditure on the score that the said capital expenditure also ultimately ensures to the efficient running of the business."

In view of the above, the case of the appellant is distinguishable decisions from the relied on by the learned AR.

Capital expenditure cannot be attributed to revenue and vice versa the expenses is for the initial outlay or for acquiring or bringing in to existence an asset or advantage of an enduring benefit to the business

that is being carried on, or for the extension of the business that is going on, or for a substantial replacement of an existing business as said, it would be capital expenditure.

It has been held in CTR v. Granite City Steam Ship Co.(1927) 13 TC 1,14 that "outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment". This has been affirmed in Ashoka Hotels vs. CIT (1969) 72 ITR 306,313 (Del) and Kalyanji Mauji & Co. V/s CIT (1980) 122 ITR 49 (SC). In view of the above factual and legal position, the addition of Rs.1,05,89,163/- made by the AO is confirmed."

5. The Id. AR vehemently submitted before us that the Id.CIT(A) has grossly erred in confirming the disallowance of expenses of revenue nature incurred during the year. The AR further submitted that the assessee has rightly claimed the expenses while filing return of income by giving complete details in the computation of income filed before the authorities below. The Id. AR argued that the said expenditure were not incurred either for acquiring capital asset or creating any enduring benefit and therefore finding of the facts by the authorities below were incorrect and wrong. The Id. AR submitted that for claiming any expenses of revenue in nature the mode of entries or treatment of the said expenditure in the books of account were not material for allowing the deduction while computing the income of the assessee. The Id. AR finally submitted that the issue was covered in favour of the assessee by the decision of co-ordinate Bench of the Tribunal in the case of assessee's sister concern in M/s Reliance Footprint Ltd V/s ACIT in ITA No.5997/Mum/2011 (AY-2008-09) dated 23.10.2013. The Id. AR submitted that in view of the ratio laid down in

the above mentioned decision of the Tribunal the ground should be decided in favour of the assessee by allowing the appeal of the assessee.

6. The Id. DR on the other hand while opposing the contention of the Id. AR submitted that the expenditure by the assessee were of capital nature as substantiated by the manner of treatment and accounting in the books of account maintained by the assessee in which the said expenditure shown under the head Project Development Expenditure which was further classified under the head WIP and the assessee in order to suppress profit claimed the said expenditure in the computation of income at the time of filing the return of income. Therefore the orders passed by the authorities below should be upheld and be confirmed.

7. We have carefully considered the rival contentions and perused the material placed before us including the orders of authorities below. We find that the assessee is in the business of trading in merchandise and goods and services. The assessee incurred an expenditure of Rs.1,05,89,163/-, the details whereof has been given supra in para no 4 hereinabove. From perusal of the above details it is clear the expenditures consisted of Salaries and wages, Employees welfare and other amenities, travelling and conveyances, legal and professional fees and other interest paid which appeared to be apparently of revenue expenditure. In our opinion the submissions of the Id. AR carry

weight that in order to claim expenses the manner, mode and mere entries in the books of account and final presentation in the balance sheet is not material. We further find that the issue in hand stands covered in favour of the assessee by the decision of Tribunal in the case of M/s Reliance Footprint Ltd (supra) wherein it has been held as under :

"6. We have heard both parties and their contentions have carefully been considered. There is no dispute to the fact that the assessee has shown a turnover of Rs.4.75 crores in relation to its stores which were made operational during the year at Bangalore and Hyderabad. Before the AO it was the case of the assessee that it is in the process of expansion of its business and thus this expenditure has been incurred in relation to expansion of business. It was also submitted that the expenditure which are in the nature of salary, electricity, audit fee etc. are essentially incurred for expansion of existing line of business that is setting up of more number of stores/speciality stores under planned format or for maintenance of already established stores. These submissions were made before the AO and have not been controverted by the AO and disallowance is made mainly on the ground that the assessee can not give dual status to these expenditures i.e. as "capital" in books of account and as "revenue" for Income tax purposes. However, such view of the AO can not be upheld in view of the decision of Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Company Ltd. (supra) wherein it has been held that the issue that whether the assessee is entitled to a particular deduction will depend upon the provisions of law relating thereto and not on the view which the assessee might take of his rights; nor can the existence or absence of entries in his books of account be decisive or conclusive in the matter.

6.1 From the submissions made by the assessee before the AO it is also clear that opening of stores at various places was one composite business of the assessee and in that course the assessee had started operation of its stores at Bangalore and Hyderabad. It was the contention of the assessee that operations of these stores at various locations is one composite business and once business had been started then the expenditure can not be linked only to the stores which became operational during the year under consideration. Such submission of the

assessee has not been controverted by the AO. All these details were submitted before the AO and it is not the case of the AO that assessee had not incurred such expenditure for its business. In the letter submitted by the assessee before AO it is clearly mentioned that when the expenditure is incurred for the purpose of expansion of business which is already in existence and, which is in the nature of revenue, then the same is allowable as revenue expenditure irrespective of the treatment given by the assessee to such expenditure in its books of account. No material has been brought on record by the AO to negate such submissions made by the assessee. These propositions put forth by of the assessee before AO are supported by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Kothari Auto Parts Manufacturers Pvt. Ltd. (supra), and the decision of Hon'ble Gujarat High Court in the case of CIT vs. Alembic Glass Industries Ltd. (supra). Therefore, it has to be held that these expenditures incurred by the assessee are for the purpose of expansion of its business and those expenditure are in the nature of revenue (being mostly paid to employees). These are allowable in the year itself as per ratio of aforementioned decision of the Hon'ble Bombay High Court in the case of CIT vs. Kothari Auto Parts Manufacturers Pvt. Ltd.(supra) and Hon'ble High Court of Gujrat in the case of CIT vs. Alembic Glass Industries Ltd. (supra). These expenditures did not create any asset and also did not provide enduring benefit to the business of the assessee so as to say that the expenditure was capital in nature. Therefore, we hold that expenditure are allowable in the year under consideration irrespective of the fact that assessee has given dual status to such expenditure in its books of account vis-à-vis computation of income filed alongwith return.

6.2 So far as it relates to the observations made by Ld. CIT(A) in his order that assessee vide his letter dated 28/6/2011 has merely given the name, designation and amount paid with reference to salary paid without giving any proof of work actually being done, we may mention that we have carefully gone through the details filed by the assessee before Ld. CIT(A). Copy of the documents submitted before Ld. CIT(A), as mentioned earlier, were filed before us. We find that assessee in the details so filed has mentioned job description of each of the employees alongwith amount paid to him describing also that how much TDS has been deducted. For example job description is described as sourcing product design and development; sourcing and procurement; category management; marketing communication, marketing consumer behaviors; distribution and logistic; sourcing and procuring; talent acquisition buyer

etc. etc. In the note which has been filed along with the details it is clearly mentioned that the assessee has employed these persons for carrying out market research work such as to contact various manufacturers and suppliers of the footwear and other accessories; getting base price and delivery schedules as well as comparing the products of various manufacturers of unbranded products with the price and quality of branded products, preparing various reports for this purpose, planning, distribution and logistic, sourcing, designing products, inventory planning discussing consumer preferences for various product range etc. The submissions made by the assessee before Ld. CIT(A) matches with the job description of all the employees. Therefore, it cannot be said that assessee did not provide the necessary details. By furnishing these details, the assessee had placed on record prima facie material to substantiate the query raised by Ld. CIT(A). Without pointing out any defect and without bringing any adverse material on record, Ld. CIT(A) has observed that assessee has failed to prove that the expenditure was made wholly and exclusively for the purpose of business of the assessee. Thus there is no basis for recording such finding. Therefore, even for the additional reasons described by Ld. CIT(A), the disallowance cannot not be upheld.

6.3 It is already mentioned that the assessee itself has disallowed a sum of Rs. 51,23,957/- out of the aforementioned amount of Rs.3,64,49,545/- under the provisions of section 40A(7)/40A(9)/43B of the Act. The claim of the assessee as per grounds of appeal is limited only to a sum of Rs. 3,13,25,588/- (Rs.3,64,49,545 (-) Rs. 51,23,957/- on account of disallowance u/s. 40A(7)/40A(9)/43B), therefore, we hold that an amount of Rs. 3,13,25,588/- should be allowed to the assessee on account of revenue expenditure.

7. In the result, the appeal filed by the assessee is allowed in the manner aforesaid."

We are , therefore , respectfully following the ratio laid down in the above decision inclined to allow the ground raised by the assessee by reversing the order of first appellate authority.

8. The issue raised in the second grounds of appeal is against the confirmation of disallowance of Rs.36,40,709/- by the Id. CIT(A) as made by the AO under section 43B(f) in respect of reversal of provision for leave encashment.

9. The facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has claimed deduction u/s 43B of Rs.76,65,668/- in respect of leave encashment on payment basis which was inclusive of Rs.36,40,709/- on account of reversal of provision for the leave encashment existing on the first day of previous year(O.B.). The AO issued show cause notice to the assessee to justify the amount written back out of the provision for leave encashment created in earlier years and not offering the same to tax during the year which was responded by the assessee by submitting that some employees of the assessee have consumed the leave and had not encashed the leave. Consequently the provisions made for them were reversed in the current year by adjusting the same against the current year expenditure. However, the provision for leave encashment was not offered to tax for the reason that the provisions for leave encashment was not claimed as deduction in the earlier year at the time of creation. Accordingly the reversal thereof has been reduced from the income. The AO found that the contention of the assessee was not acceptable as the deduction under section 43B in respect of leave encashment of was allowable on actual payment basis and

accordingly added the same to the income of the assessee. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A) who also dismissed the appeal of the assessee by observing and holding as under :

"Section 43B opens with a non-obstante clause which means that irrespective of other provisions, section 43B will have overriding effect. The intension of the legislature is to allow deduction in respect of the kinds of liabilities referred to in the section in computing income u/s. 28 only in that previous year in which such sum is actually paid by the assessee. The intention is made more specific by providing that it would be so irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee.

Sec. 43B , which was initially limited to taxes got extended to welfare dues, bonus or commission, interest to public financial institution and later banks and lastly leave encashment.

In view of the above, the case of the appellant is distinguishable from the decisions relied on by the learned AR.

Also it has been held in Associated Pigments Ltd. v. CIT (1998) 234 ITR 589 (Cal) that it is not necessary that a provision should be made in the account so as to be entitled to deduction of an amount, which is paid during the year.

The issue of deduction on actual payment has been held to be proper in the case of CIT v. Vinay Cement Ltd. (2007) 213 CTR 268 (SC); CFT v. Alom Extrusion Ltd. (2010) 1 SCC 489(SC); CIT v. Maruti Udyog Ltd. (2010) 320 ITR 729 (SC), Berger Paints India Ltd. v. CIT (2004) ~66 ITR 99 (SC) and CIT v. Udaipur Distilleries Co. Ltd. (2009) 314 ITR 188 (SC).

In view of the above, the disallowance of Rs. 36,40,709/- made by the AO"

10. The Id. Counsel for the assessee vehemently argued before us that the Id. CIT(A) has grossly erred in confirming the order of AO on the issue of

taxation of provision written back qua the leave encashment as both the authorities below have failed to appreciate the correct position qua the leave encashment. The Id.AR submitted that the provision for leave encashment were created in the earlier years and were coming over since then. During the year the assessee reversed the provision to the extent of Rs.36,40,709/- relating to those employees who have consumed the leave and have not claimed the leave encashment. The Id. AR also contended that the provision for leave encashment was not claimed as expenditure in the year of creation and therefore during the year when these provisions were reversed by way of writing back the same these were reduced from the income of the assessee and not offered to tax. Lastly, the Id.AR submitted that since the provisions were not claimed as expenditure in the year of creation, the same could not be brought to tax in the year when these were actually written back. In view of this the Id.AR of the assessee submitted that the order of Id.CIT(A) be set aside and the AO be directed to allow deduction.

11. On the other hand, the Id. DR relied on the orders of authorities below by submitting the provision for reversal has to be brought to tax.

12. We have heard the rival contentions and perused the material placed before us including the orders of authorities below on the issue. We find from the page 35 of the paper book that the assessee has opening balance of provision of leave encashment brought forward from the earlier years and the

amount written back out of the said amount to the tune of Rs.36,40,709/-. It was submitted before us during the course of hearing the provision for leave encashment was not claimed as deduction in the year of creation of the said provision and therefore in the year of reversal/writing back of leave encashment due to non-claim of leave encashment by the employees who have consumed leave period of the same could not be offered to tax. We are of the considered opinion that if at the time of creation of provision of leave encashment, deduction was not claimed, the AO was not justified to bring to tax the amount written back out of the said provisions for leave encashment. Therefore, we find merit in the argument of the Id.AR that reversal of Rs.36,40,709/- could not be taxed on the ground that the same were not claimed as deduction in the earlier year in which the same were created. However, we feel that the issue is required to be examined at the end of the AO and it would be fair and reasonable if the matter is set aside and restored back to the file of AO to examine whether the amount written back of Rs.36,40,709/- was claimed as deduction or not and decide the issue accordingly as per fact and law.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 13.12.2016.

Sd
(MAHAVIR SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 13.12.2016

Sr.PS:SRL:

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

True copy

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai