

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.707/Bang/2020: Asst.Year 2014-2015

M/s.Karnataka Soaps & Detergents Limited, PB No.5531, Bangalore Pune Highway, Rajajinagar Bangalore – 560 055. PAN : AAACK8519K.	v.	The Asst.Commissioner of Income-tax, LTU, Circle 1 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Ashok A.Kulkarni, CA
Respondent by : Sri.Kannan Narayanan, JCIT-DR

Date of Hearing : 01.09.2021	Date of Pronouncement : 03.09.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 16.09.2020. The relevant assessment year is 2014-2015. Two issues are raised in this appeal, namely

- (i) Disallowance of expenditure amounting to Rs.12,95,867
- (ii) Ex-gratia payment of Rs.56,94,720.

We shall adjudicate the above issues as under:-

Disallowance of expenditure amounting to Rs.12,95,867

2. The assessee is a wholly owned undertaking of Government of Karnataka. It is engaged in manufacture of soaps, detergents and sandalwood oil. For the assessment

year 2014-2015, the return of income was filed on 26.11.2014 declaring total income of Rs.54,20,30,270. The assessee had set up a branch office in Mumbai. The branch office was housed in a leased premises (leave and licence deed was executed on 5th December, 2013). The leased premises required certain repairs and renovation amounting to Rs.12,95,867. The assessee had claimed the above expenditure of Rs.12,95,867 as a revenue expenditure in the return of income. The assessment was completed vide order dated 11.11.2016 u/s 143(3) of the I.T.Act. The Assessing Officer had disallowed the above expenditure of Rs.12,95,867 incurred on the leased premises, for repairs and renovation. According to the Assessing Officer, the impugned expenditure is a capital expenditure.

3. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) placed reliance on the judgment of the Hon'ble Madras High Court in the case of CIT v. ETC Travel Agency (P.) Ltd. in IT Appeal No.2442 of 2008 (judgment dated 26.06.2019). The CIT(A) also relied on *Explanation 1* to section 32(1) of the I.T.Act. The relevant finding of the CIT(A), reads as follow:-

“As seen from the body of judgment Hon'ble Madras High Court has considered all the relevant cases on the subject including Helene pens (p) Ltd. case, Indus Motor Company Ltd. and Joyallukkas India (p) Ltd. and held that the renovation expenses are capital expenditure within the meaning of expl. (1) to Sec.32(1). In the present case all the facts are almost similar to the case presented above decided by Madras High Court. Accordingly, relying on the decision of Madras High Court I hold that expenditure is capital in nature.”

4. The assessee being aggrieved, has raised this issue before the Tribunal. The assessee has filed a paper book enclosing the copies of lease deed, copies of invoices / bills for incurring expenditure of Rs.12,95,867. The learned Counsel for the assessee submitted that the expenditure incurred by the assessee towards repairs and renovation of the premises to house the branch cannot be stated to be capital in nature. It was submitted that the premises which was taken on lease required repairs and renovation to uplift the ambiance and make it fit for operating as a branch office. Therefore the expenditure incurred was in connection with the business of the assessee and an allowable deduction. The assessee also placed reliance on the following judicial pronouncements:-

- (i) CIT v. MAC Charles (India) Ltd. (2015) 233 Taxman 177 (Kar.).
- (ii) CIT v. Infosys Technologies (No.2) (2012) 349 ITR 588 (Kar.).
- (iii) CIT v. Sagar Talkies (2010) 325 ITR 133 (Kar.)

5. The learned Departmental Representative submitted that the expenditure incurred is for substantial repairs and cannot be stated to be revenue expenditure. It was submitted that the expenditure was incurred prior to the assessee occupying the premises and the same ought to be capitalised. It was stated that it is not current repairs or routine renovation, which could be termed as revenue expenditure.

6. We have heard rival submissions and perused the material on record. The assessee had claimed expenditure amounting to Rs.12,95,867 as revenue expenditure. The A.O.

disallowed the same treating it as a capital expenditure. The CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) placed reliance on the judgment of the Hon'ble Madras High Court in the case of CIT v. ETC Travel Agency (P.) Ltd. (supra) and also *Explanation 1* to section 32(1) of the I.T.Act. The details of the expenditure of Rs.12,95,867 are as follows:-

Sr. No.	Nature of the work done	Amount
1.	Shree Electrical Works (Electrical Wiring Work)	1,75,777
2.	S.S.Decor (False Ceiling & POP works)	1,15,365
3.	Ramesh Gedia (Civil Labour Work)	1,23,952
4.	Ramniwas Prajapati (Carpentry Labour Work)	1,75,993
5.	Mohmd Shamin (Painting Works)	1,30,336
6.	Ebrahim H. Timber Mart	3,28,330
7.	Shirodkar - Falnikar & Associates (Architect Fees)	88,445
8.	Miscellaneous expenses (hardware material, pest control treatment, glass, vertical blinds, etc.	1,57,660
	Total	12,95,867

6.1 The copies of the invoices / bills for incurring the above such expenditure of Rs.12,59,867 is placed on record at pages 17 to 55 of the paper book filed by the assessee. On scrutiny of the same, it is seen that expenditure incurred by the assessee towards repairs and renovation to the leased premises cannot be stated to be a capital expenditure. It is very important to note that under leave and licence agreement dated 05.12.2013, the assessee is barred from carrying out any alteration with regard to the structure without prior approval from the licensor. The admitted facts is that there is no addition / increase to premises on account of incurring of the impugned expenditure.

6.2 The Hon'ble jurisdictional High Court in the case of CIT v. Infosys Technologies (No.2) (2012) 349 ITR 588 (Kar.) had held that incurring of expenditure towards brick work, cement, plastering, painting walls, laying ceramic tiles, steel grill, internal sanitary fixtures, sewerage works, supply of fixing of water supply pipes, are revenue expenditure. In the case considered by the Hon'ble jurisdictional High Court, the assessee had incurred expenditure of Rs.15,89,613. The expenditure incurred was towards brick work, cement, plastering, painting walls, laying ceramic tiles, steel grill, internal sanitary fixtures, sewerage work, supply and fixing of water supply pipes in leased premises. The assessee had claimed expenditure as revenue expenditure. The A.O. held that expenditure incurred were enduring in nature and, therefore, should be treated as capital expenditure. The Commissioner (Appeals) confirmed the view taken by the A.O. On further appeal, the Tribunal held that the expenses of Rs.15,89,613 would not amount to major repairs. It was further held by the ITAT that having regards to the explanation offered by the assessee that the premises required repairs when they were taken on lease and in order to improve the ambience of the office, it was necessary to carry out the repairs specifically in the business of software where there was stiff competition. The mere fact that enduring benefit ensure to the assessee by itself would not be a factor to be decided as to whether it is a capital or revenue expenditure. The Tribunal concluded that the amount could not be said to be a capital expenditure and was only a revenue expenditure. On appeal, the Hon'ble High Court confirmed the ITAT's order. The Hon'ble High Court held *“that*

the premises had been taken on lease by the assessee and the repairs that were carried out for the purpose of business to create the ambience and to carry out repairs to use the premises as the office of the assessee as there was stiff competition in the business of the assessee and the expenditure of the amount of Rs.15,89,613 which would come to Rs.9 per sq.ft. in respect of 17113 sq.ft. could not be said to be capital expenditure. The mere fact that it was taken on lease for six years would not itself render the expenditure capital in nature”.

6.3 *Explanation 1* to section 32(1) of the I.T.Act relied on by the CIT(A) is of no help to the revenue. *Explanation 1* to section 32(1) of the I.T.Act only permits the assessee to claim depreciation on capital expenditure incurred on leased premises taken by the assessee. On the other hand, if the expenditure incurred by the assessee is on the revenue front, whether the premises is taken on lease or not is immaterial and the same is always an allowable deduction. Therefore, the CIT(A) misinterpreted *Explanation 1* to section 32(1) of the I.T.Act.

6.4 In the light of the aforesaid reasoning and the judgment of the Hon’ble jurisdictional High Court, cited supra, we hold that the assessee is entitled to deduction of sum of Rs.12,95,867 as revenue expenditure. It is ordered accordingly.

Ex-gratia payment of Rs.56,94,720.

7. The assessee consistently follows a policy of paying ex-gratia to all those employees, who by virtue of their emoluments are not covered by the Payment of Bonus Act, 1965. While computing the taxable income, the assessee, inadvertently, included ex-gratia payment of Rs.56,94,720 for disallowance u/s 43B of the I.T.Act. According to the assessee, this ex-gratia is not statutory payment, and therefore, not covered under the provisions of section 43B of the I.T.Act. Accordingly, during the course of assessment proceedings, the assessee vide his letter dated 24.10.2016 brought this fact to the notice of the Assessing Officer. The assessee also filed revised computation of income along with a covering letter. It is stated that during the hearing, the Authorised Representative of the assessee also made a mention about the inadvertent mistake of disallowance u/s 43B of the I.T.Act. However, the plea of the assessee was not considered and there was not even a mention of it in the assessment order.

8. Aggrieved, the assessee filed an appeal to the first appellate authority. The first appellate authority rejected the ground raised by the assessee. The relevant finding of the first appellate authority, reads as follow:-

“As seen from above the Act provides opportunity to the assessee to rectify the defects within reasonable time. The assessee has not filed the revised return during the time available. Hence the assessee cannot force the AO to do something for which AO is not responsible. Having observed the plea of the assessee to issue directions to the assessee is hereby rejected. Ground rejected.”

9. Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned AR submitted that the powers of the CIT(A) are coterminous with that of the Assessing Officer. It was contended that the CIT(A) ought to have decided the issue which was raised before him. In this context, the learned AR relied on the judgment of the Hon'ble Apex Court in the case of Jute Corporation of India Ltd. v. CIT reported in 187 ITR 688.

10. We have heard rival submissions and perused the material on record. It is the case of the assessee that ex-gratia payment made to the employees is not a statutory payment, and hence, not liable for disallowance u/s 43B of the I.T.Act. This fact was brought to the notice of the Assessing Officer vide the assessee's letter dated 24.10.2016 along with revised computation (copy of the letter with revised computation is placed on record at page 62 to 69 of the paper book filed by the assessee). The Assessing Officer has not mentioned anything about the claim of assessee in the assessment order. The CIT(A) rejected the plea of the assessee since the assessee has not filed a revised return. It is an admitted position of law that powers of the CIT(A) are coterminous with that of the Assessing Officer can exercise. The CIT(A) while hearing an appeal has all the powers which an Assessing Officer can exercise. The CIT(A) ought to have independently considered the issue raised before him *de hors* the fact that the issue was not considered by the Assessing Officer. In this context, we rely on the judgment of the Hon'ble Apex Court in the case of Jute Corporation of India Ltd. v. CIT (supra). Further, the

judgment of the Hon'ble Supreme Court in the case of Goetze (India) Limited v. CIT reported in 284 ITR 323 only impinge upon the powers of the Assessing Officer to consider a claim which is not made in the return of income, whereas, such restriction is not there with regard to power of an Appellate Authority. We are of the view that the issue of ex-gratia payment, whether it can be subjected to disallowance u/s 43B of the I.T.Act needs examination by the Assessing Officer. Accordingly, this issue is restored to the files of the A.O. The A.O. is directed to offer a reasonable opportunity of hearing to the assessee and take a decision in accordance with law. It is ordered accordingly.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 03rd day of September, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 03rd September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-14, Bangalore
4. The CIT (LTU), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore