

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 1047/Ahd/2015
Assessment Year 2009-10

The ACIT, Circle-5, Ahmedabad (Appellant)	Vs	M/s. Rosebys Interiors India Ltd., GHCL House, Opp. Punjabi Hall, Nr. Navrangpura, Ahmedabad PAN: AADCR8816M (Respondent)
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Assessee by: Shri Mukund Bakshi, A.R.
Revenue by: Shri Sudhendu Das, CIT-D.R.

Date of hearing : 31-10-2022
Date of pronouncement : 04-11-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-9, Ahmedabad in Appeal no. CIT(A)-XI/161/ACIT.Cir-5/13-14 vide order dated 04/02/2015 passed for the assessment year 2009-10.

2. The Revenue has taken the following grounds of appeal:-

- “1. The CIT(A) has erred in law and on facts in deleting the addition of Rs.21,28,55,537/- on account of disallowance of Advertisement expenses u/s. 37 of the Act and not considering the findings of the AO.*
 - 2. On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the order of the Assessing Officer.*
 - 3. It is, therefore, prayed that the order of the Ld. Commissioner of Income tax (A) may be set-aside and that of the Assessing Officer be restored.”*
3. The brief facts of the case are that the assessee filed its original return of income for assessment year 2009-10 declaring total loss of ₹ 5,21,64,446/- on 30-09-2009. Subsequently, the assessee revised its return of income on 28-09-2010 and claimed advertising expenses to the tune of ₹ 21,28,55,537/-. During the course of assessment, the Ld. Assessing Officer observed that the said advertisement expenses were not debited to the profit and loss account by the assessee. Instead, as per the balance sheet of the assessee, the said advertising expenses have been accounted as “capital work in progress (brand building expenditure)”. In response to show cause notice issued by the assessing officer, the assessee submitted that the assessee had capitalised the above expenditure in the books of account, but since the expenditure was purely in the nature of revenue, the assessee claimed these expenses in the (revised) return of income as revenue expenditure. However, AO did not accept the assessee’s contention and disallowed the above

advertisement expenses claimed by the assessee by way of filing revised return of income on the ground firstly, that the assessee itself has classified the above expenditure as capital work in progress (CWIP) and accordingly, the same are capital in nature and cannot be allowed as revenue expenditure and secondly, the AO observed that the expenses were quite substantial (almost to the tune of four times the turnover of the assessee during the captioned year), which itself points out that the expenses are capital in nature. Accordingly, the AO disallowed the advertisement expenditure, with the following observations:

“5.9 In light of the above facts and circumstances of the case and after duly considering all the submissions of the assessee, the undersigned finds no reason to allow the assessee the expenditure of Rs. 21,28,55,537/- as sought by the assessee in its revised computation of income. This entire amount of Rs. 21,28,55,537/- is disallowed as revenue expenditure u/s 37 as it has itself been claimed by the assessee as CWIP. During the course of assessment proceedings, the assessee has made the alternate plea that even if it is treated as a capital expenditure, then it should be allowed to seek depreciation at the rate of 25% on the same. However, since the assessee had itself classified it as Capital Work in Progress, it is most certainly an asset that was never put to use during the year under consideration. There is no indication in any of the submissions made by the assessee whether the said asset was put to use for more than 180 days or less than that. In fact, it is clear that the said capital asset remained as CWIP throughout the year because even in the Balance

Sheet for F.Y. 2009-10 i.e. subsequent assessment year AY 2010-11. the assessee had shown these expenses as CWIP and the amount had increased by another Rs. 19 crore i.e. CWIP of Rs. 40 crore. Thus, evidently, this asset had never been put to use in AY 2009-10 or in AY 2010-11.-Thus, no depreciation on the said CWIP? can be allowed to the assessee. Penalty proceedings u/s 271(1)(c) are initiated for concealment of income and furnishing inaccurate particulars of income.

(Disallowance: Rs. 21,28,55,537/-)”

4. In appeal, Ld. CIT(Appeals) allowed the assessee's appeal with the following observations:

“2.2 I have carefully considered the contentions as well as the case laws relied upon by the appellant. I have also gone through case records. In my considered opinion the appellant has rightly claimed advertisement expenses as revenue expenditure. The appellant has claimed it as revenue expenditure in its revised return, which is also filed timely. The approach of Ld. A.O is not proper in holding it as capital expenditure against claim of appellant as revenue expenditure. The Supreme Court in case of Empire Jute 124 ITR 1 (SC) has categorically observed that there may be cases where the expenditure even if incurred for obtaining as advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle paid

down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital filed that the expenditure would be disallowable on an application of this test. Similarly the Hon'ble Delhi High Court in CIT vs Casio India Ltd. 335 ITR 196 referred to a bunch of appeals with the lead case being ITA 1820/2010 entitled CIT vs. City Finance Consumers Finance Ltd. 335 ITR 29 Delhi had held that expenditure on advertising and sales promotion is to be treated as business expenditure u/s.37 of the Act. The High Court therein considering the appeal of the Revenue in regard to the claim of the assessee before the A.Q. pertaining to an expenditure of Rs.4.18 lakhs for advertising and sales promotion wherein the A.O. had relied upon the judgement of Apex Court in Madras Industrial Investment Corporation vs CIT 225 ITR 802 (SC) upheld the order of the Tribunal which had confirmed the order of the CIT(A) who had held that there is no concept for deferred revenue expenditure in the Income Tax Act,1961.

Also relied upon the judgment of the Supreme Court in the cases of Calcutta Co. Ltd. v. CIT [1959] 37 ITR 1 (SC), CIT v. Associated Cement Companies Ltd. [1988] 172 ITR 257 (SC), Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC) and the judgment of this court in CIT v. Salora International Ltd. [2009] 308 ITR 199 (Delhi).

In the case of DCIT vs. Core Healthcare Ltd. 308 ITR 263 (Guf.) gujrat high court has discussed the issue in detail as under

"The assesses carried the matter further in appeal before the Tribunal and succeeded. The Tribunal held that making of accounting entries in the books of account was not determinative of the character and/or nature of the claim. That the expenditure in question did not bring into existence any tangible asset and merely because the expenditure may bring some benefit of an enduring nature to the assessee, that factor alone was not sufficient to treat the expenditure as capital expenditure. The Tribunal has relied on the two apex court decisions in the case of Empire Jute Co. Ltd. v. CIT [1989] 124 ITR 1 and Alembic Chemical Works Co. Ltd. v. CIT [1989] 177 ITR 377.

14. In relation to the first item, namely, advertisement expenses, it is not in dispute that the expenditure of Rs. 70 lakhs and odd was incurred on a special advertisement campaign. However, that by itself would not be sufficient to determine as to whether the expenditure in question is on revenue account or capital account..... making of an entry or absence of an entry does not determine the allowability or otherwise of the item of expenditure and the same cannot be considered to be a factor adverse, if the expenditure is otherwise of allowable nature. Every expenditure incurred by a business concern, if incurred for the purposes of business, is bound to result in some benefit, direct or indirect, immediate or after some time,, but the benefit to the business cannot be termed capital or revenue only on the

basis of the period for which the benefit is derived by the business. Any benefit resulting to a business need not be confined to the year of expenditure and this is an ordinary incident of a running business. In the case before the Allahabad High Court in Hindustan Commercial Bank Ltd., In re [1952] 21 ITR 353 the expenditure on advertisement had been incurred at the point of time when new branches of the bank had to be opened and inaugurated. It has been held by the Allahabad High Court that there is no proposition that the amount spent in a special campaign of advertisement must necessarily be capital expenditure.

15. The apex court decisions on which reliance has been placed by the Tribunal, namely, Empire Jute Co. Ltd. [1980] 124 ITR i(SC) and Alembic Chemical Works Co. Ltd. [1989]. 177 ITR 377 (SC) specifically lay down that the nature of advantage has to be considered in a commercial sense and the test of enduring benefit is not a certain or conclusive test and cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. The expression "asset or advantage of an enduring nature" has been evolved to emphasise the element, of a sufficient degree of durability appropriate to the context. The idea of once for all payment and enduring benefit are not to be treated as something akin to statutory conditions.

16. Applying the aforesaid settled legal position to the facts .of the case, it is not possible to agree with the appellant-Revenue that the advertisement expenses incurred by the respondent-assessee at the time of installation of additional machinery in the existing line of business resulted in any enduring benefit, so as to be treated as capital in nature.

17. Question No. 1 is, therefore, answered in the affirmative, namely, advertisement expenses incurred by the assessee to create brand image is allow able as revenue expenditure."

2.2 On careful perusal of above order and in this light of facts and circumstances the of the present case, I am of the view that the main ground of the appellant in the present appeal is squarely covered in favour of the assessee and against the revenue by several decisions (supra) of jurisdictional High Court and ITAT. Relying upon the judgment of Hon'ble Gujarat High Court and various other courts, I am in agreement with the contention of appellant. Accordingly, I find no justification in the addition of the aforementioned amount to the income of the assessee which is hereby deleted."

5. The Department is in appeal against the aforesaid order passed by Ld. CIT(Appeals). The primary contention of the Department is that CIT erred in facts and in law in allowing assessee's appeal, since the expenditure is in nature of "brand building" and hence cannot be allowed as revenue expenditure. The Ld. DR primarily relied upon the observations made by the

AO in the assessment order. He further submitted that the order passed by Ld. CIT(Appeals) is a very cryptic order, without controverting the findings made by the assessing officer during the course of assessment proceedings. Accordingly, the same is liable to be set aside.

6. In response, counsel for the assessee submitted that the order passed by Ld. CIT(Appeals) is not cryptic and has dealt with the issue in detail. He submitted that the AO has not doubted the genuineness/veracity of the expenses, but has only disallowed the same on the basis that in the original return of income, the assessee had treated the same as capital work in progress (CWIP), and accordingly, the assessee is not permitted to change the tax treatment to “revenue” in nature, once when the assessee has initially, looking into the nature of expenses, has treated the same as CWIP. He further placed reliance on various judicial precedents in support of his contention that advertisement/brand building expenses have been held by various Courts/Tribunals to be revenue expenditure, and accordingly the assessee is eligible to claim the same as revenue expenses.

7. We have heard the rival contentions and perused the material on record. In our view, from the facts placed before us, it is evident that the AO has not challenged the genuineness of expenses incurred by the assessee. During the course of assessment, the assessee placed copies of invoices/newspaper advertisements/other documentary evidence in support of the genuineness of advertisement expenditure incurred by the assessee. Therefore, the genuineness of the expenses has not been doubted. The primary reason for disallowance of advertisement expenses by the AO is that

firstly, the assessee cannot be permitted to change its stand, wherein the original return, the assessee had treated the aforesaid expenses as capital work in progress and secondly, since the advertisement expenses were almost 4 times the turnover of the assessee in the first year of operations, the same are capital in nature. In our view, various Courts and tribunals have consistently taken the position that advertisement/brand building expenditures are revenue nature and further there is no concept of deferment of revenue expenditure in the Income Tax Act. In the case of **Salora International Limited[2009] 308ITR199 (Delhi)**, the assessee claimed deduction of advertising expenditure of approximately Rs. 3.08 crores. According to the Assessing Officer, the expenditure was incurred for launching of its products. The Assessing Officer was of the view that such expenditure was of an enduring nature and, therefore, treated one-third as 'capital expenditure' and only allowed the two-thirds of the said amount as 'expenditure to the assessee'. The Tribunal held that there was a direct nexus between the advertising expenditure and the business of the assessee and that the assessee had to incur such expenditure to meet the competition in the Indian market for selling its products in India. It, therefore, allowed the assessee's claim. The High Court upheld the order of ITAT and held that advertisement expenditure for launching products is revenue expenditure.

7.1 In the case of **Dy. CIT v. Core Healthcare Ltd. [2009] 308ITR 263 (Guj.)**, the claim of the assessee for deduction of advertisement expenses had been rejected by treating the expenditure in question as capital expenditure on the ground that it was a special advertisement campaign launched by the assessee-company for creating a corporate image of the

company and was not incurred for running the existing business of the assessee-company. It was held that the assessee-company had undertaken diversification plan and as a public issue was forthcoming to make the people aware about various new products of the company, the advertisement campaign was launched which, thus, amounted to obtaining a benefit of enduring nature resulting in the expenditure being of capital nature. The Gujarat High Court held that that it was not in dispute that the expenditure of Rs. 70 lakhs and odd was incurred on a special advertisement campaign. However, that by itself would not be sufficient to determine as to whether the expenditure in question was on revenue account or capital account. Every expenditure incurred by a business concern, if incurred for the purposes of business, is bound to result in some benefit, direct or indirect, immediate or after some time, but the benefit to the business cannot be termed capital or revenue only on the basis of the period for which the benefit is derived by the business. Any benefit resulting in a business need not be confined to the year of expenditure and this is an ordinary incident of a running business. Thus, it could not be held that the advertisement expenses incurred by the respondent-assessee at the time of installation of additional machinery in the existing line of business resulted in any enduring benefit, so as to be treated as capital in nature. Thus, the advertisement expenses incurred by the assessee to create brand image were allowable as revenue expenditure.

7.2 Further, in various decisions viz. *ITC v. Dy. CIT* [2003] 86 ITD 135 (Kol.); *Asstt. CIT v. Ashima Syntex Ltd.* [2009] 117 ITD 1 (Ahd.) (SB); *CIT v. Citi Financial Consumers Fin. Ltd.* [2012] 20 taxmann.com

452/[2011] 335 ITR 29 (Delhi); and CIT v. Casio India Ltd. [2012] 20 taxmann.com 449/[2011] 335 ITR 196 (Delhi), the Courts/tribunals have held that advertisement expenditure/brand image expenditure are allowable as revenue expenditure in the year, in which these are incurred.

7.3 In view of the factual and legal position as discussed above, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in allowing the assessee's appeal and holding that the advertisement expenditure claimed by the assessee as revenue expenditure in the revised return of income is, allowable in the instant set of facts.

8. In the result, appeal of the Department is dismissed.

Order pronounced in the open court on 04-11-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 04/11/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद