

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 6605/Del/2014, A.Y. 2004-05

ITA No. 6606/Del/2014, A.Y. 2005-06

ITA No. 2700/Del/2015, A.Y. 2006-07

ITA No. 2701/Del/2015, A.Y. 2007-08

M/s. Hindustan Coca-Cola Beverages Pvt. Ltd. Orchid Centre, 3 rd Floor, DLF Golf Course Road, Sec-53, Gurgaon-122001, Haryana	Vs.	Dy. Commissioner of Income Tax, Circle-12(1), Central Revenue Building New Delhi
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ITA No. 3902/Del/2015, A.Y. 2006-07

ITA No. 3903/Del/2015, A.Y. 2007-08

Dy. Commissioner of Income Tax, Circle-12(1), Central Revenue Building New Delhi	Vs.	M/s. Hindustan Coca-Cola Beverages Pvt. Ltd. Orchid Centre, 3 rd Floor, DLF Golf Course Road, Sec-53, Gurgaon-122001, Haryana PAN : AAACH3005M
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Assessee by	Shri Neeraj Jain, Adv. Shri Aditya Vohra, Adv. & Mr. Arpit Goyal, CA
Revenue by	Mohd. Gaysuddin Ansari, CIT(DR)

Date of hearing:	27.03.2023
Date of Pronouncement:	12.04.2023

ORDER**Per Anubhav Sharma, JM :**

The revenue and assessee are in appeal against order dated 09/10/2014, 26/03/2015, 27/03/2015 respectively for the assessment year 2004-05, 2005-06, 2006-07 & 2007-08 respectively passed by the CIT(A)-X, New Delhi, CIT(A)-4, New Delhi respectively (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 17/12/2008, 24/11/2009 & 27/12/2010 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Circle-12(1), New Delhi (hereinafter referred as the Ld. AO).

The Revenue is in appeal against order dated 27/03/2015 & 26/03/2015 for A.Y. 2006-07 to 2007-08 of Ld. CIT(A)-4, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 24.11.2009 & 27.12.2010 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Circle-12(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the assessee company is a manufacturer and trader of non alcoholic beverages and filed returns for respective years, which were processed u/s 143(2) of the Act. Additions were made and based on the grounds of appeal, it can be observed that primarily six issues are raised by assessee, which are common in following appeals, so, for convenience same are adjudicated by this common order.

First issue is disallowance of non compete fee which is common for A.Y 2004-05, 2005-06, 2006-07 and 2007-08.

Second issue, is the disallowance of depreciation claimed on acquisition of distributors list which is common in AY 2004-05, 2005-06, 2006-07 and 2007-08.

Third issue, is the adhoc disallowance being 10% of processing charges debited to P&L account which are common to A.Y. 2004-05 and 2005-06.

Forth issue, is the disallowance of CSR expenses for the year 2004-05.

Fifth issue, is disallowance u/s 40(a)(ia) of the Act, to be restricted to 30%, which is common for 2006-07, 2007-08 and during the course of arguments, Ld. Counsel for the assessee has stated at bar that he is not pressing this ground.

Sixth issue, is disallowance of expenses incurred on Ice-Boxes for A.Y. 2006-07 and 2007-08.

3. Further, the Revenue is in appeal for A.Y. 2006-07 and 2007-08 challenging the deletion of processing charges. The CIT has given relief to the assessee on the ground that assessee had produced party wise details before the Ld. CIT(A) which was missing in assessment year 2004-05 and also for the fact that in assessment year 2010-11 the assessing officer has not preferred to make the disallowance on payment of processing charges.

4. At the time of argument, Ld. AR submitted that the grounds are primarily raised and adjudicated in the previous years either at the level of Tribunal or CIT(A) and detailed written submission of the same is provided. Ld. DR also admitted that the issues have been considered in the previous years and adjudicated at the two appellate levels.

5. Now taking up these issues individually for determination.

5.1 **Issue no. 1**; Disallowance of non compete fee is issue arising from the fact that assessee had acquired running businesses of various bottlers companies. Thus, restricting them from sharing their knowledge and know how in relation to the acquired business for specified period. The assessee claimed deduction for the same as deferred revenue expenditure on amortized basis over the period of non-competition. In the assessment order for assessment year

2001-02, being the first year of payment, the assessing officer disallowed the proportionate deduction on the ground that non-compete fee was capital expenditure, resulting in benefit of enduring nature, and therefore, not an allowable as revenue deduction.

5.1.1 Ld. CIT(A) had upheld the order of Ld. AO and the issue was carried forward in the assessment year 2002-03 where Tribunal had upheld the view of Id. Tax Authorities below. However, the assessee's appeal in this regard stands admitted before Hon'ble Delhi High Court. Subsequently, the appeals for 2001-02 and 2003-04 have been admitted on the same substantial question of law by Hon'ble Delhi High Court.

5.1.2 That being the states of facts of the legacy issue, the propriety requires to follow the rules of consistency as there is nothing to differ. Thus, the issue is decided against the assessee. **Consequently, the grounds in that regard raised in the respective A.Y. stand dismissed.**

6. **Issue no. 2;** In regard to disallowance of depreciation claimed on acquisition of distributors list it comes up that assessee had appointed M/s. S.R.Mineral Water Pvt. Ltd. as its distributor in Chennai which was earlier distributor of competing product from which it had built a large customer base in Chennai. Assessee had forgone a substantial amount due from S. R Mineral, which was by way of deposits collected on behalf of assessee. This amount as forgone by the assessee was considered as consideration for acquisition of rights to access to the customer data base available with the said distributor. Assessee considered it as a capital expenditure towards acquisition of intangible asset being customer data bank and claimed depreciation.

6.1 Ld. AO allowed the same in the assessment year 2003-04 being first year and in the subsequent years, the assessee claimed the depreciation on opening WDV however, it was disallowed on the ground that copy of agreement with

bottler was not furnished. Ld. CIT(A) upheld the same on the basis of not furnishing of the evidence.

6.2 The claim of assessee is that in appellant's own case for A.Y. 2003-04, the cost of acquisition of customer's/ bottler's list was treated as capital asset and depreciation was allowed after scrutiny assessment and Hon'ble Delhi High Court while quashing u/s 263 for A.Y. 2003-04 vide **CIT vs. Hindustan Coca Cola Beverages (P) Ltd. [2011] 331 ITR 192 (Delhi)** held that business information/ records including customer list constitute an intangible right which is eligible for depreciation. On this basis and relying judgment of Hon'ble Supreme Court in **CIT vs. Rajasthan Breweries Ltd. in SLP 30646/2011 of Hon'ble Delhi High Court in CIT vs. Oswal Agro Mills : 341 ITR 467 (Del)**, **DCIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. [2014] 222 taxman 30 (Guj) Bombay High Court judgment in DIT vs. HSBC Asset Management (I) (P) Ltd. 228 taxman 365 (Bom.)** and certain judgments of the Tribunal, it was submitted that once an asset enters into block of asset and depreciation benefit has been given in the initial year of claim the same cannot be disturbed in the subsequent years.

6.3 In this regard it can be observed that the Ld. tax authorities below have disallowed the expenditure on the basis of non-production of relevant evidence with regard to nature of agreement of assessee with M/s. S.R. Minerals Water. However, the fact of allowance of the expenditure in 2003-04 is not disputed by the Revenue. Thus, the settled proposition of law that if in the initial year of claim the depreciation, is allowed, the claim cannot be disturbed in the subsequent years, has not been followed by the Ld. Tax Authorities below on the basis of lack of agreement between the assessee and M/s. S.R. Minerals Water, to examine the nature of receipt, cannot be sustained and the **grounds arising out of this issue in the respective assessment years are allowed in favour of the assessee.**

7. **Issue no. 3;** In regard to adhoc disallowance to the extent of 10% of the processing charges it comes up that in relation to packing and processing work outsource to third parties, the processing charges were claimed during the relevant previous years and the same have been disallowed on adhoc basis on the basis of non-sustenance of same on the basis of notices issued to the concerned parties. The claim of the assessee is that there is no variations in the details of processing charges furnished during the course of assessment proceedings with the amount debited in the books of accounts. The amounts were made through banking channels. It also comes up that in assessment years 2006-07 to 2009-10 the Ld. CIT(A) has deleted the adhoc disallowance not being supported by any adverse evidence. However, in assessee's own case for assessment year 2003-04, the Tribunal has restored the issue to the files of Id. AO with the direction to the assessee to file the requisite details and reconcile the differences between the amounts appearing in the books of accounts and the balance appearing in the accounts of third parties and thereafter it is for the Assessing Officer to decide the issue as per facts and law.

7.1 On behalf of the assessee, however, it is submitted that the assessee cannot be prejudiced for non-appearance of the parties providing processing services and assessment on the basis of a guesswork cannot be sustained.

7.2 The bench accordingly is inclined to restore the issue to the files of Ld. AO with direction to examine the issue of processing charges on the basis of evidence made available by the assessee showing genuineness of the payments made to the suppliers. The non-availability of the suppliers or their failure to appear on the behest of assessee is not required to be considered to discredit the expenditure otherwise established from books and mode of payment. Accordingly, the ground arising out of this issue in appeal of assessee for the assessment year 2004-05 and 2005-06 are **allowed for statistical purposes**. While of Revenue for A.Y. 2006-07 and 2007-08, against the Revenue.

8. Issue no. 4; In regard to disallowance of CSR expenses for assessment year 2004-05 it can be appreciated that expenditure was incurred on activities like installation of handpumps, distribution of shoes, uniform etc. to school students, drought relief measures etc. Ld. AO however, considered that these expenses were not substantiated and that the same were ineligible for deduction u/s 37(1) of the Act. Ld. CIT(A) applying Explanation 2 to Section 37(1) of the Act inserted by the Finance Act, 2014, with effect from 01.04.2015 observed the same to be clarificatory in nature and made applicable to A.Y. 2004-05. In this context, it can be observed that the Raipur Tribunal Bench in the case of **Jindal Power Limited ITA no. 99/BLPR/2012** and Co-ordinate Delhi Tribunal in **The National Small Industries Corp. Ltd. vs. DCIT [2019] 175 ITD 601 (Del, Trib.)** while relying **CIT vs. Vatika Townships Pvt. Ltd. 2014, 367 ITR 466** have held that the explanation is not retrospective. These decisions of the Tribunal have been followed by Co-ordinate Bench, in case of **Honda Motorcycle and Scooter India Pvt. Ltd. vs. DCIT, ITA no. 7714/Del/2017** decided on 31.08.2020. This bench is of considered opinion that there is nothing substantiates to hold a different opinion and accordingly, **the ground is decided in favour of the assessee.**

9. Issue no. 6. Lastly coming to the disallowance expenses incurred on Ice-Boxes the same is the basis of grounds raised exclusively in A.Y. 2006-07 and 2007-08. In this regard it can be observed that assessee had made expenditure on sign board, Ice-boxes etc. provided to vendors which were accounted under the head 'Marketing Expenses'. Ld. CIT(A) has allowed the claim of Sign board as revenue expenditure, however, treated the Ice-Boxes as part of plant and machinery and allowed depreciation in assessee's own case for A.Y. 2002-03. The Tribunal has disallowed expenses hold the same to be capital in nature.

9.1 On behalf of the assessee it is submitted that there is no enduring benefit to the assessee and the purpose of expenditure is to increase the sales at the

outlets / vendors therefore, the expenditures were incurred for the purpose of business promotion and advertisement. It is submitted the Ice-boxes do not have as life and scrapped soon.

9.2 The issue is dealt by Co-ordinate Bench, in the case of assessee for A.Y. 2002-03 by co-ordinate Bench with following relevant findings :-

“21. We are of the considered opinion that the touchstone applied by Hon’ble Delhi High Court in the case of M/s. Pepsico India Holdings (P) Ltd. (supra) referring the decision of Hon’ble Apex Court in the case of Assam Bengal Cement (Supra) it was held that if the expenditure is made for acquiring or bringing into existence an asset or advertisement for the enduring benefit of the business. It is properly attributable to capital and is in the nature of capital expenditure.

22. As per factual the matrix of the present case, in the light of above decisions relied upon by the Revenue, we reach to a conclusion that the expenditure made by the assessee o Ice Chests/ Ice Boxes, Pushcarts, Dealer Sign board was made for acquiring or bringing into existence an asset for the enduring benefit of the business of the assessee for the enduring benefit of the business of the assessee which is properly attributable to a capital and certainly it was of the nature of capital expenditure. Hence, contentions of the assessee are not found to be acceptable and on the other hand submissions of the Special Counsel of the Department arc cogent and acceptable thus, conclusion of the Id. CIT(A) in the impugned order limited to this existent are confirm and upheld. In the result ground nos. 10, 11 & 12 of the assessee is partly allowed in regard to claim of the assessee for Electric Spectaculars, Neon Signs, Artwork, Glow Signs and Neon Signs but these grounds arc partly dismissed on the issue of Ice Chests/Ice Boxes and Dealer Sign board as indicated above as per our foregoing discussions.”

9.3 This bench is of considered opinion that the nature of expenditure on the articles once examined by Co-ordinate Bench, cannot be interfered without there being substantial basis to disagree, that not being there accordingly following the Co-ordinate Bench decision in assessee’s own case for A.Y. 2002-03, **the ground is decided against the assessee.**

10. As a consequence of above determination of the grounds, **appeals of assessee are allowed partly and that of Revenue are allowed for statistical purposes.**

Order pronounced in the open court on 12th April, 2023.

Sd/-

**(N.K.BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-. 12.04.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI