

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK  
'SMC' BENCH, CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No. 34/CTK/2017**  
Assessment Year : 2011-12

|  |     |                                 |
|--|-----|---------------------------------|
| Galaxy Medicare Ltd., Plot No.2, Zone-D, Phase-A, Mancheswar Industrial Estate, Bhubaneswar. | Vs. | DCIT, Circle 2(1), Bhubaneswar. |
| PAN/GIR No. AAACD 7880 L   |     |                                 |
| <b>(Appellant)</b>   | ..  | <b>( Respondent)</b>            |

Assessee by : Shri P.R.Mohanty, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 23 /05/ 2017**  
**Date of Pronouncement : 26/05/2017**

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 18.11.2016, for the assessment year 2011-12.

2. Ground Nos.1 & 5 are general in nature and hence, requires no separate adjudication by me.

3. In Ground No.2 of the appeal, the grievance of the assessee is that the Id CIT(A) erred in confirming the disallowance of Rs.1,02,200/- and Rs.58,874/- claimed towards trade mark & ISO expenditure.

4. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the assessee claimed expenditure of Rs.1,02,200/- under the head "trade mark" and Rs.58,874/- under the head "ISO " as revenue expenditure in the profit and loss account. The Assessing Officer disallowed treating the same as capital expenditure.

5. Before the CIT(A), the assessee submitted that the expenses were required to be incurred to meet the regulatory requirement of foreign governments, which protect the assessee against any infringement claim by or against it in respect of use of brand name and avoid future costs/losses on this account. It was submitted that the expenditure is allowable as revenue expenditure. The Assessing Officer did not accept the explanation of the assessee as such expenses certainly adds to the value of trademark and would have resulted in benefit of enduring nature to the assessee by way of long term business potential under the registered trademark. It was argued that the test of enduring benefit cannot be applied in isolation disregarding the other factors like creation of new/additional assets and/or creation of new/additional sources of income. Reliance was placed on the decision of Hon'ble Supreme Court in the case of Empire Jute co. Ltd vs CIT, 124 ITR 1 (SC), wherein, it was held that that expenditure for registering trademarks in India is allowable as revenue expenditure by the Assessing Officer. Ld CIT(A), however, confirmed the

order of the Assessing Officer for the very same reason based on which the disallowance was made by the Assessing Officer.

6. Ld A.R. of the assessee before me relied on the decision of Ahmedabad Bench of the Tribunal in the case of Fortune Infotech Limited vs ACIT in ITA No.1384 & 1386/Ahd/2008 for the assessment year 2004-05 order dated 15.7.2011, wherein, it was held as under:

“We have heard both the parties and gone through the facts of the case as also the aforesaid decisions. While adjudicating the claim in the context of claim of expenditure for obtaining ISO 9002 certification, a co-ordinate Bench in their decision in Tirupati Microtech (P) Ltd. (supra), while referring to decision Hon'ble Supreme Court in the case of Empire Jute Co. Ltd. vs. CIT (1980) 124 ITR 1 concluded that since by making payments for obtaining ISO 9002 certification, the fixed capital of the company did not enhance in any manner; it rather created a positive image of products of the assessee for the smooth conduct of the business, expenditure was revenue in nature. Following this decision, another Bench in Climate Systems India Ltd.(supra) allowed the claim of the assessee on account of ISO certification charges. In the light of view taken in these decisions, especially when the Id. DR did not place any material before us so as to enable us to take a different view in the matter nor brought to our notice any contrary decision, we have no alternative but to allow the claim of the assessee. Therefore, ground no..1 in the appeal of the assessee is allowed.”

7. He further placed reliance on the decision of Mumbai Benches of the Tribunal in the case of DCIT vs. M/s. USV Limited in ITA No.453/Mum/2009 for the assessment year 2006-07 order dated 18.3.2010, wherein, it was held that the Hon'ble Supreme Court in the case of Finlay Mills vs CIT, 20 ITR 475 (SC) has held as under:

“The result however of the trade marks Act is only two fold. By registration, the owner is absolved from the obligation to prove his ownership of the trademark. It is treated as prima facie proved on production of the registration certificate. Thus, it

merely saves him the trouble of leading evidence, in the event of a suit, in a court of law, to prove his title to the trade mark. It has been said that registration is in the nature of collateral security furnishing the trader with a cheaper and more direct remedy against infringers. Cancel the registration and he has till his right enforceable at common law to restrain the piracy of his trade mark. In our opinion, this is neither such an asset nor an advantage so as to make payment for its registration a capital expenditure."

8. He submitted that the Tribunal following the same allowed the claim as revenue expenditure to the assessee. He further relied on the decision of Ahmedabad Tribunal in the case of Lubi Electricals Ltd vs Department of Income Tax in ITA No.1925 and 2760/Ahd/2007 for the assessment years 2002-03 and 2005-06 order dated 23.4.2010, wherein, it was held that ISO -9000 expenses was allowable as business expenditure under section 37(1) of the Act. Therefore, it was his submission that the disallowance made may be deleted.

9. Ld D.R. relied on the orders of lower authorities.

10. I find that the undisputed facts of the case are that the assessee during the year incurred expenses of Rs.1,02,200/- and Rs.58,874/- for registration of trademark and getting ISO certification. The Assessing Officer disallowed the deduction on the ground that it was capital expenditure and not revenue expenditure as the same would give enduring benefit by incurring the said expenditure. Ld A.R. has relied on the decision of Hon'ble Supreme Court in the case of Empire Jute Co Ltd (supra), wherein, the Hon'ble Supreme Court has held that there may be cases where the expenditure even if incurred for obtaining

of an advantage of enduring benefit may none the less, be on revenue account and the test of enduring benefit may break down.". Further, the Ahmedabad Bench of the Tribunal in the case of Lubi Electricals Ltd, held that ISO -9000 expenses was allowable as business expenditure under section 37(1) of the Act. No contrary decision could be cited by Id D.R. He could not show any good reason to not to follow the above quoted decision of the Hon'ble Supreme Court in the case of Empire Jute Co. Ltd (supra) and the decision of Ahmedabad Benches of the Tribunal in the case of Lubi Electricals (supra). Therefore, respectfully following the same, I set aside the orders of lower authorities and delete the additions of Rs.1,02,200/- and Rs.58,874/- made by the Assessing Officer under the head "trade mark expenses and ISO expenses and allow this ground of appeal of the assessee.

11. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.2,27,377/- towards bad debt written off.

12. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts of the case are that the assessee had claimed expenditure of Rs.2,27,377/- under the head "bad debts written off". The Assessing Officer disallowed the claim on the ground that the assessee failed to produce documents/evidences to justify the writing off the same under section 36(1)(vii) r.w.s 36(2) of the Act.

13. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

14. Ld A.R. relied on the decision of this Bench of the Tribunal in the case of Alfa Transformers Ltd vs ACIT in ITA No.35/CTK/2017 for the assessment year 2006-07 order dated 26.4.2017, wherein, it was held that the writing off the security deposits in the interest of the business was a genuine loss suffered by the assessee and hence, allowable deduction to the assessee.

15. Ld D.R. relied on the orders of the lower authorities.

16. I find that the Hon'ble Supreme Court in the case of [TRF Limited vs. CIT](#), 323 ITR 397 (SC) while adjudicating a similar claim concluded as under:

"This position in law is well-settled. After 1st April,1989 it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee....."

17. In the instant case, it is not disputed that the assessee has written off bad debts in its books of account of 10 parties aggregating to Rs.2,27,377/- on the ground that those amounts remained outstanding for more than five years and there is no chance of recovery despite the best efforts to recover the same and the assessee has submitted the ledger copies of those parties before the Assessing officer. Therefore, respectfully following the decision of the Hon'ble Apex Court in TRF Ltd.(supra) , I set aside the orders of lower authorities and delete the addition of Rs.2,27,377 and allow this ground of appeal of the assessee.

18. In Ground No.4 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs.25,000/- under section 40A(3) of the Act.

19. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer found that the assessee had paid Rs.25,000/- to West Bengal Orthopedic Association (conference) in cash for stall charges in violation of the provisions of section 40A(3) of the Act. Therefore, he disallowed deduction for the same to the assessee.

20. On appeal before the CIT(A), the assessee submitted that the expenses were incurred solely and exclusively for the business of the assessee. The expenses were paid to UBOACON Calcutta for stall which includes, tent charges, electricity charges, table, chairs, charges for snacks, which were paid in cash being a business necessity and compulsion being intrinsic nexus with the business of the assessee.

21. The CI(A) confirmed the action of the Assessing Officer on the ground that the purpose for which the payment was made was totally inconsequential and irrelevant.

22. Before me, Id A.R. reiterated the submissions made before the lower authorities.

23. Ld D.R. relied on the orders of lower authorities.

24. I find that it is not disputed that the expenditure of Rs.25,000/- claimed for payment made to WBOACON in cash for stall payment was genuine. It is also not disputed that the same was incurred solely and exclusively for the purpose of business of the assessee. The expenditure was incurred in cash by the assessee in exceptional circumstances to acquire a stall and the assessee was required to make payment of Rs.25,000/- in cash. Thus, the expenditure was incurred by the assessee out of business expediency and hence, covered by the exception provided in the proviso to section 40A(3A) of the Act. Hence, I set aside the orders of lower authorities and delete the addition of Rs.25,000/- made u/s.40A(3) of the Act and allow this ground of appeal of the assessee.

25. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26/05/2017 in the presence of parties.

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 26/05/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Galaxy Medicare Ltd., Plot No.2, Zone-D, Phase-A, Mancheswar Industrial Estate, Bhubaneswar
2. The Respondent. DCIT, Circle 2(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**

|     |  | Date  | Initial |              |
|-----|--|---|---------|--------------|
| 1.  | Draft dictated on                                | 23/05/17  |         | Sr.PS        |
| 2.  | Draft placed before author                       | 23/05/17 (dictation pad has been enclosed along with original file) |         | Sr.PS        |
| 3.  | Draft proposed & placed before the second member |   |         | AM           |
| 4.  | Draft discussed/approved by Second Member.       |   |         | AM           |
| 5.  | Approved Draft comes to the Sr.PS/PS             |   |         | Sr.PS/<br>PS |
| 6.  | Kept for pronouncement on                        |   |         | Sr.PS        |
| 7.  | File sent to the Bench Clerk                     |   |         | Sr.PS        |
| 8.  | Date on which file goes to the H.C.              |   |         |              |
| 9.  | Date on which file goes to the SPS               |   |         |              |
| 10. | Date of dispatch of Order.                       |   |         |              |