

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT AND  
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No.92/COCH/2016  
Assessment Year:2011- 12

A.C.I.T., Corporate Circle-1(2), Kochi.	Vs	M/s Joy Alukhas (India) Pvt. Ltd., Door No.40/2096, A&B Peeves Triton, Marine Drive, Shanmugham Road, Ernakulam. PAN:AABCJ 1087 G
(Appellant)		(Respondent)

Appellant by	Shri A. Dhanaraj, Sr. D. R.
Respondent by	None
Date of hearing	26/09/2017
Date of pronouncement	26/09/2017

**ORDER**

**PER P. K. BANSAL, V.P.**

This appeal has been filed by the Revenue against the order of the CIT(A) dated 28/12/2015 by taking the following grounds:

- "1. *The Order of the Hon'ble Dispute Resolution Panel, Bangalore in DRP No: 330/DRP-2-BNG 2015-16 dated 09/12/2015 is opposed to law, weight of evidence, facts and circumstances of the case.*
2. *Whether the facts and in the circumstances of the case, learned Dispute Resolution Panel, Bangalore was right in holding that the expenditure incurred by the assessee for renovation of the lease hold premises for setting up a new show room is revenue expenditure which is*

*otherwise a capital expenditure, based on the decision of jurisdictional High Court in assessee's own case for the Asst. year 2007-08, as the decision of jurisdictional High Court has not been accepted by the Department and the Revenue has filed further appeal before the Hon'ble Supreme Court of India against the judgment of High Court of Kerala for the Asst. year 2007-08.*

3. *For these and other grounds that may be urged at the time of hearing, it is requested that the order of the learned Dispute Resolution Panel, Bangalore may be set aside and that of the Assessing Officer restored."*

2. None appeared on behalf of the assessee, even though the notice was duly sent therefore, we decided to dispose of the appeal of the Revenue after hearing Learned D. R. and considering the material available on record.

3. The only issue involved in this appeal relates to the treatment of expenditure relating to improvement of lease hold premises as to whether these expenses have to be treated as revenue expenditure or capital expenditure.

4. The facts of the case, in brief, are that the Assessing Officer noted that the assessee in computation of his income for the impugned assessment year has reduced a sum of Rs.13,47,75,164/- towards the lease hold improvement from this total income. It was noted that the assessee has capitalized the said expenditure in his books of account and claimed the depreciation as per the Companies Act. When inquired of, the assessee submitted that the assessee has opened various show rooms to sell jewellery during the year in leasehold premises and in this regard expenditure has been incurred for providing false ceiling, partition work, putting up sales counter, show walk for jewellery display, electrical work etc. and the expenditure does not include any

expenditure undertaken for civil construction. Since the expenditure were the revenue expenditure therefore, he claimed it while computing the income as revenue expenditure. The assessee has placed reliance on the decision of Hon'ble Kerala High Court in his own case for assessment year 2007-08 as reported in 49 Taxman.com 437 wherein it was held that the said expenditure should be allowed as revenue expenditure. The Assessing Officer disallowed the claim of the assessee as the Revenue has preferred SLP against the decision of Hon'ble High Court in the earlier year but allowed the depreciation to the assessee @10% on the said amount. The assessee contested the aforesaid finding of the Assessing Officer before the DRP. The DRP decided the said issue following the decision of Hon'ble Kerala High Court in assessee's own case for assessment year 2007-08 in assessee's favour. The assessee went in appeal before the CIT(A) against the order of the Assessing Officer who allowed the ground taken by the assessee.

5. We have heard the submissions of learned D.R., carefully considered the same along with the orders of the tax authorities below. We noted that the said issue is duly covered in favour of the assessee in assessee's own case for the assessment year 2007-08 by the order of Hon'ble Kerala High Court as reported in 49 Taxman.com 437. Learned D. R. even though relied on the order of the Assessing Officer but did not disagree that the issue is not covered by the decision of Hon'ble Jurisdictional High Court in assessee's own case. The only submission of Learned D. R. was that the appeal has been filed as the Revenue has gone in appeal by way of SLP before Hon'ble Supreme Court against the decision of Hon'ble High Court in assessee's own case for assessment year 2007-08. In our view, merely because the

Revenue has gone in appeal against the decision of Hon'ble High Court in assessee's own case by which the issue is duly covered in the earlier year, we cannot take the view that the issue is not covered by the decision of Hon'ble High Court. As on date the decision of Hon'ble Jurisdictional High Court in assessee's own case for assessment year 2007-08 is clearly applicable. This fact has not been disputed that the decision of Hon'ble High Court has not been reversed by Hon'ble Supreme Court. Merely SLP is pending before the Hon'ble Supreme Court does not mean that the issue has been decided against the assessee. The decision of Hon'ble High Court in the assessee's own case for assessment year 2007-08 is in operation. We, therefore, dismiss the ground taken by the Revenue. Consequently, the appeal filed by the Revenue stands dismissed.

6. In the result, the appeals of the Revenue stands dismissed.

(Order pronounced in the open court on 26/09/2017)

Sd/  
(GEORGE GEORGE K.)  
Judicial Member

Sd/  
(P. K. BANSAL)  
Vice President

**Dated:26/09/2017**  
**\*Singh**

**Copy of the order forwarded to :**

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
5. D.R., I.T.A.T., Cochin

Asstt. Registrar