INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 5013/Del/2015
Assessment Year: 2011-12

DCIT Circle 19(2), New Delhi.	Vs.	M/s. Paramount Surgimed Ltd. Plot No. 1, LSC, Okhla Indl. Area, Phase-II, New Delhi – 110 020 PAN AAACP0814A
(Appellant)		**(Respondent)**

Assessee by:	Shri R.C. Pandey, Sr. DR
Department by :	Shri Piyush Kaushik, Advocate
Date of Hearing	21/08/2017
Date of pronouncement	20/11/2017

O R D E R

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the department against the order dated 22.5.2015 passed by the Ld. CIT(A) -7 for assessment year 2011-12 wherein the Ld. CIT(A) has allowed the assessee's appeal in entirety.

2. Brief facts of the case are that the return of income was filed declaring an income of Rs. 1,36,55,545/-. The case was subsequently selected for scrutiny and the assessment was completed u/s 143 (3) of the Income Tax Act, 1961 (herein after called 'the Act') at a total income of Rs. 1,75,10,422/- after making a disallowance of Rs. 37,96,092/- u/s 37 of the Act and further disallowance of Rs. 58,785/- u/s 14A of the Act. During the course of assessment proceedings the AO observed that assessee had incurred Rs. 53,30,738/- on advertisement and publicity expenses. It was further observed that Rs. 47,45,116/- had been incurred on promotion of 'OSIM' brand and Rs. 5,85,622/- had been incurred on advertisement and publicity material. The AO was of the opinion that the amount of Rs. 47,45,116/- was incurred on promoting a brand whose benefit was spread over a period of time. Accordingly, the AO proceeded to disallow 80% of the amount and added the same to the income of the assessee by treating it as deferred revenue expenditure to be claimed @20% in successive years and the remaining 20% was allowed as a deduction for the year under consideration. Further, the AO also worked out the value of average investment during the year and proceeded to disallow 0.5% of the average value of

investment and, thereafter, made a disallowance of Rs. 58,785/- u/s 14A of the Act.

2.1 On appeal before the Ld. CIT (A), both the additions / disallowances were deleted by the Ld. First appellate authority. Now the department has approached the ITAT and has challenged the deletion of both the disallowances.

3. Ld. Sr. DR submitted that as far as the disallowance u/s 37 of the Act was concerned, the AO had recorded a finding that substantial amount had been incurred on promotion of a brand and, therefore, the AO was absolutely correct in only allowing 20% as deduction in the current year and holding that the balance was deferred revenue expenditure to be allowed as deduction @ 20% in four successive years. On the issue of disallowance u/s 14A, it was submitted that the AO has noted that the assessee was having common infrastructure and common personnel for earning income under various heads and further the assessee was also using its administrative, managerial and infrastructural set up for earning exempt income. Accordingly, the AO was correct in resorting to invocation of rule 8D(2) of the Act and making a disallowance.

4. In response, the Ld. Authorised representative relied on the findings of the Ld. CIT (A) and submitted that both the issues had been analysed and discussed at length in the impugned order and it was prayed that the impugned order should be upheld.

5. We have heard the rival submissions and have also perused the material on record. As far as the issue of disallowance of Rs. 37,96,092/- in respect of advertisement and publicity expenses is concerned, it has been submitted that the expenditure on advertisement and publicity comprised of expenditure on press advertisement, film screening in various theatres, SMS campaign, hoardings, brochures, pamphlet etc. It is seen that the advertisement was not specifically only of OSIM brand but of different products of OCIM. It is also seen that there is no allegation of any part of expenditure not being wholly and exclusively for the purpose of business carried out by the company. A perusal of the assessment order reveals that the AO has not brought out any specific instances to demonstrate that particular items of expenditure pertain to promotion of the brand. Even during the proceedings before us, the department could not demonstrate, with evidence, its claim that the expenditure incurred in respect of advertisement and publicity expenses had substantial amount of brand promotion expenses. How the AO has

segregated the advertisement expenses into advertisement expenses and brand promotion expenses is also not discernible from the AO's order. The Ld. CIT (A), while allowing the assessee's claim for deduction of entire expenditure has relied on few of the judgment of the Hon'ble Delhi High Court like CIT vs. M/s. Spice Distribution Limited in ITA No. 597/2014, CIT vs. SBI Cards & Payment Services Private Limited in ITA No. 603/2014, CIT vs. ADIDAS India Marketing (P) Ltd. reported in 195 Taxman256 and CIT vs. Vodafone Essar South Ltd. in ITA No. 594/2014. The ratio of all the above said judgments of Hon'ble High Court of Delhi is that advertisement expenditure is normally to be treated as revenue in nature because advertisements do not have long lasting effect on the general public. The Hon'ble Delhi High Court has also held that under the Income Tax Act there is only a reference to capital or revenue expenditure and there is no reference to deferred revenue expenditure. It has also been held that advertisement expenditure in the present day context should primarily be treated as revenue expenditure unless there are special circumstances and reasons to hold that the expenditure was capital in nature. It has also been held that where expenditure was incurred to popularise a product, it was for business promotion.

5.1 In the facts of the present case, it is evident that the AO has not demonstrated with cogent evidence, any special circumstances or reasons to hold that the impugned expenditure was capital in nature. It is also note-worthy that no specific instances have been pointed out by the AO in this regard. Ld. Sr. DR, while arguing on behalf of the department, also could not cite any judicial precedents in favour of the Revenue which were in opposition to the judgments relied upon by the Ld. CIT (A). In the given circumstances, we are of the considered opinion that the findings of the Ld. CIT(A) on this issue do not call for any interference on our part and we deem it appropriate to dismiss ground No. 1 of the departmental appeal.

5. 2 As far as ground No. 2 relating to disallowance u/s 14A of the Act is concerned, the Ld. CIT (A) has given a finding that the assessee did not have any exempt income during the year and that the investments being held by it were in the nature of strategic investments. Thereafter, the Ld. CIT (A) has placed reliance on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd., wherein under identical circumstances, disallowance u/s 14A deleted by the ITAT was upheld by the Hon'ble Delhi High Court. On this issue also the department could not negate the findings of the Ld. CIT (A) that the

assessee did not have any exempt income during the year under consideration. Therefore, we find that the Ld. CIT (A) has rightly applied the ratio of the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. and we find no reason to interfere on this issue also. Accordingly we dismiss ground No. 2 of the departmental appeal.

6. In the final result the appeal filed by the department is dismissed.

Order pronounced in the open court on 20.11.2017. .

sd/-	sd/-
(R.K.PANDA) ACCOUNTANT MEMBER	(SUDHANSHU SRIVASTAVA) JUDICIAL MEMBER

Dated: 20.11.2017

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi