

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” BENCH: HYDERABAD

BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

ITA. No.827/Hyd/2016
Assessment Year:2011-2012

Manthana Laboratories Ltd., Hyderabad. PAN: AACCM 3691 CIT(A) (Appellant)	vs.	DCIT, Circle-16(2), Hyderabad. (Respondent)
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For Assessee:	Shri S. Rama Rao
For Revenue :	Shri K.J. Rao, DR

Date of Hearing :	22.03.2018
Date of Pronouncement :	23.03.2018

ORDER

PER D.S. SUNDER SINGH, AM:

1. This appeal filed by the assessee is directed against the order of Ld. CIT(A)-4, Hyderabad and it pertains to the assessment year 2011-2012. In this appeal, assessee raised the following grounds of appeal, which reads as under:-

- “1. The order of the Ld. CIT(A) is erroneous both on facts and in law.
2. The Ld. CIT(A) erred in confirming the action of the Assessing Officer in disallowing product development expenditure of Rs. 71,07,513/- without considering the fact that the expenditure incurred is revenue in nature and is allowable either u/s 35 or u/s 37 of the Act.
3. The Ld. CIT(A) erred in not considering the alternate ground that the cost incurred towards product development would be eligible for depreciation if the amount is considered as capital in nature.”

2. At the outset, Ld Counsel for the assessee brought to our notice that the appeal is time barred by 22 days. In this regard, Learned Counsel for the Assessee brought our attention to the affidavit dated 01.06.2016 filed by the assessee, explaining the reasons for not filing the appeal before the Tribunal within the prescribed time limit and

requesting for condonation of delay, and submitted that the assessee-company suffered huge losses and was facing financial crunch and there was no business activity. During the period 05.05.2016 to 31.05.2016, the Managing Director of the company, who looks after these matters, was not well. Resultantly, the present appeal was filed with a delay of 22 days.

3. After hearing the submission of the Learned Counsel for the Assessee and on perusal of the contents of the affidavit filed by the assessee, we are of the considered opinion that there is a sufficient reason for not filing the appeal within the stipulated time. Therefore we condone the delay and proceed to decide the appeal.

4. The only issue involved in this appeal relates to the disallowance of project development expenditure of Rs. 71,07,513/- u/s 37(1) of the Act. Briefly stated relevant facts of the case are that during the assessment proceedings, A.O. observed that the assessee debited a sum of Rs.,. 71,07,513/- as product development expenditure to the Profit & Loss account (P&L a/c. in short). Keeping in view the nature of the business of the assessee-company, the Assessing Officer(AO) was of the opinion that the product development expenditure was incurred to carry out continuous development and research on products to meet the market requirements from time to time. Therefore, the A.O. was of the view that the assessee has acquired enduring benefit hence the expenditure incurred was capital in nature. In support of his view, the A.O. relied on the following decisions, viz., (i) CIT vs. Jalan Trading Co. Pvt. Ltd (1985) 23 Taxman (SC); (ii) Hylam Ltd vs. CIT (1973) 87 ITR 310 (AP); (iii) Devidas Vithaldas & Co. vs. CIT (1972) 84 ITR 277 etc. Accordingly, A.O. held that the expenditure should be considered as capital expenditure and depreciation required to be allowed u/s 32(1)(ii) of the Act. The depreciation computed by the A.O. is as under:

“3.2 As per section 32(1)(ii) of the Act, the depreciation allowable on an asset treated as intangible asset is 25% of the written down value of the asset. Therefore, the assessee is eligible for depreciation as given below.

A.Y.	Opening WDV (Rs.)	Expenditure incurred on Product Development during the current A.Y. (Rs.)	Depreciation allowed @ 25% (Rs.)	Closing WDV (Rs.)
2010-11	-	43,52,369	10,88,092.25	32,64,276.75
2011-12	32,64,276.75	71,07,513	25,92,947	77,78,84.75

5. Aggrieved by the order of the Assessing Officer, assessee went on appeal before the Ld. CIT(A).

6. Ld. CIT(A) confirmed the addition made by the Assessing Officer. Aggrieved by the order of the Ld. CIT(A), assessee is in further appeal before the Tribunal.

7. During the appeal hearing, Learned Counsel for the Assessee submitted that the assessee is following a consistent system of accounting and claiming the product development expenditure as ‘revenue expenditure’ which is being allowed by the Assessing Officer in the earlier years. In the instant case, the A.O. desires to disallow the product development expenditure and allow the depreciation. The A.O. considered the opening balance of the product development expenditure and computed the depreciation on the aggregate amount of the product development expenditure incurred. However according to the Ld.AR the opening balance adopted by the A.O, as reflected in the table extracted above, for the A.Y. 2011-12 was at Rs. 32,64,276/- and the same is incorrect.

8. Learned Counsel for the Assessee, referring to page 18 of the paper book, brought our attention that the opening balance, was Rs.

2,16,19,667/- and the expenditure incurred during the year was Rs. 71,07,513/- relating to salaries, purchase of materials and other expenses. Accordingly, the aggregate expenditure, as per the assessee, works out to Rs. 2,87,17,180/- as under:-

Opening Balance	-	Rs. 2,16,19,667/-
Add Expenditure incurred	-	Rs. 71,07,513/-
Total	-	Rs. 2,87,17,180/-

Learned Counsel for the Assessee contended that the depreciation @ 25% is required to be allowed on the said amount of Rs. 2,87,17,180/- or the expenditure claimed by the assessee in the P & L Account.

09. On the other head, Learned Departmental Representative(DR) relied on the orders of the lower authorities.

10. We have heard both the parties and perused the material placed on record. There is no dispute with regard to the contention that the impugned expenditure is capital expenditure which is of enduring in nature and the case law relied upon by the Assessing Officer supports the contention. Therefore, we do not find any infirmity in the orders of the lower authorities in holding that the expenditure was capital expenditure. However, as rightly submitted by the Learned Counsel for the Assessee there was a mistake in computing the depreciation on capital expenditure. Assessing Officer has adopted the opening balance at Rs. 32,64,276/- instead of Rs. 2,16,19,667/-, which should be increased by the current year of expenditure amounting to Rs. 71,07,513/- and allow the depreciation @ 25%. This issue was not properly examined by the Assessing Officer. Therefore, we are of the considered opinion that the issue requires to be remitted back to the file of the A.O to re-compute the depreciation on product development expenditure after arriving at the correct balance of as at the beginning

of the year. In this connection the AO also should consider the expenditure allowed in the earlier years and the balance remained in the beginning of the year. Accordingly, we set aside the orders of the lower authorities and remit the matter back to the file of the A.O. to decide the issue afresh on merits.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd March, 2018.

Sd/-

(Smt. P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-

(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 23rd March, 2018.

OKK, Sr.PS

Copy to

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2.	DCIT, Circle 16(2), Aayakar Bhavan, Basheer Bagh, Hyderabad.
3.	CIT (A)-4, Hyderabad.
4.	Pr. CIT-4, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File