

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA NO. 1159/MUM/2016 : A.Y : 2010-11**

ACIT-8(1)(1), Mumbai  
(Appellant) Vs. M/s. Reliance Digital Retail Ltd.,  
Court House, 3<sup>rd</sup> floor,  
Lokmanya Tilak Marg,  
Dhobi Talao, Mumbai 400 002.  
**PAN : AADCR6320A** (Respondent)

**ITA NO. 1160/MUM/2016 : A.Y : 2010-11**

ACIT-8(1)(1), Mumbai  
(Appellant) Vs. M/s. Reliance Fresh Realty Ltd.,  
Court House, 3<sup>rd</sup> floor,  
Lokmanya Tilak Marg,  
Dhobi Talao, Mumbai 400 002.  
**PAN : AABCR1718E** (Respondent)

**ITA NO. 1161/MUM/2016 : A.Y : 2010-11**

ACIT-8(1)(1), Mumbai  
(Appellant) Vs. M/s. Reliance Hyper Realty Ltd.,  
Court House, 3<sup>rd</sup> floor,  
Lokmanya Tilak Marg,  
Dhobi Talao, Mumbai 400 002.  
**PAN : AADCR6588G** (Respondent)

**Assessee by : Shri Madhur Agrawal**

**Revenue by : Shri A. Mohan**

**Date of Hearing : 07/05/2018**

**Date of Pronouncement : 16/05/2018**

**ORDER****PER G.S. PANNU, AM :**

The captioned are three appeals by the Revenue in the case of three different assessees, all relating to Assessment Year 2010-11. At the time of hearing, it was a common point between the parties that the issue involved in all the appeals stand on an identical footing and, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. Due to the aforesaid reason, appeal in ITA No. 1160/Mum/2016 is taken as the lead case. This appeal by the Revenue is directed against order of CIT(A)-14, Mumbai dated 28.12.2015 pertaining to Assessment Year 2010-11, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 04.04.2013 u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act'). In this appeal, Revenue has raised the following Grounds of appeal :-

*“(i) The Ld CIT (A) has erred on facts and in law in deleting the disallowance of expenses made U/s. 37(1) of Rs. 60,79,24,773/- holding that these expenses are in the nature of revenue expenses without properly appreciating the fact that these expenses are pre-operative in nature and also without appreciating the factual and legal matrix as clearly brought out by the Assessing Officer in the assessment order that these expenses were in the nature of capital expenses.*

*(ii) The Learned CIT(A) has erred on facts and in law, in treating the expenses incurred on Capital Work in Progress of Rs. 60,79,24,773/-, as revenue expenditure instead of capital expenditure without properly appreciating the fact that such expenditure is providing enduring benefit to the business of the assessee.*

(iii) *The Ld CIT (A) has erred on facts and in law in deleting the disallowance of expenses made U/s. 37(1) of Rs. 60,79,24,773/- holding that these expenses are in the nature of revenue expenses without properly appreciating the fact that the assessee has itself in the books in its books of accounts treated the same to be capital in nature and accordingly capitalized the same as 'Capital WIP'.*

(iv) *The Ld CIT (A) has erred on facts and in law in deleting the disallowance of expenses made U/s. 37(1) of Rs. 60,79,24,773/- holding that these expenses are in the nature of revenue expenses without properly appreciating the fact that the claim of assessee in dual nature that in the books of accounts claiming it as capital expenses and for taxation as revenue expenses.*

2. *The CIT (A)'s order is contrary to law and on facts and deserves to be set aside.*

3. *The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.*

4. *The appellant prays that the order of the CIT (A) on the above grounds to be set aside and that of the AO restored."*

3. Briefly put, the relevant facts are that the respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956 and is, *inter-alia*, engaged in the business of organised retail, i.e. sourcing and selling of fruits, vegetables, food article, groceries, fast moving consumer goods and other goods of daily use through its different outlets. For the assessment year under consideration, it filed its return of income declaring a loss of Rs.293,34,33,890/-, which was subject to a scrutiny assessment whereby the assessed loss was scaled down to Rs.232,55,09,415/-. The solitary reason for scaling down the returned loss was on account of a sum of Rs.60,79,24,773/- representing revenue expenditure, which was

disallowed by the Assessing Officer as being capital in nature. The CIT(A) has since allowed the claim, against which the Revenue is in appeal before us.

4. The facts relevant to the said dispute are as follows. As noted earlier, assessee is in the business of organised retail, which is carried out through various retail stores. The said business of the assessee is stated to have commenced in the previous year relevant to Assessment Year 2008-09. The Assessing Officer noted that during the year under consideration, assessee had added some new stores/outlets in the same line of business. In the books of account, assessee had debited such expenditure under the head 'Project Development Expenditure' which was not debited in the Profit & Loss Account, but considered as a part of Capital Work-in-Progress. The expenditure under this head reflected expenditure incurred by the assessee in acquiring, adding and maintaining the new stores during the year under consideration. While filing its return of income, assessee claimed that a part of such expenditure amounting to Rs.60,79,24,773/- debited under the head 'Project Development Expenditure' was revenue in nature, and since it has been incurred during the year under consideration for the purposes of a business already in existence, the same was an allowable expenditure within the meaning of Sec. 37(1) of the Act. On being asked to explain by the Assessing Officer, assessee reiterated that its business of retailing through stores was in existence since earlier years and such business was an indivisible business; that the revenue expenditure incurred in carrying out expansion of the existing line of business or for maintenance and operation of already established stores is liable to be treated as a revenue expenditure. Assessee also referred to the nature of such expenditure being on account of salaries, travelling, professional fee, repairs, etc. and explained that the

same was revenue in nature. Assessee also explained that all its activities are directly operated and managed by the Board of Directors and the administration is centralised, which shows clear inter-connection, interlacing, interdependence, common management, common business estimates, common funds and common central place of business *qua* the existing as well as the expanded line of business of retailing reflected by the opening of new outlets/stores. The explanation furnished by the assessee was not found satisfactory by the Assessing Officer as, according to him, the impugned expenditure was incurred in connection with acquisition and addition of new stores and, therefore, was capital in nature. The Assessing Officer also noted that in the books of account assessee has shown it as a pre-operative expenditure and, therefore, for that reason also, it could not be treated as a revenue expenditure. As per the Assessing Officer, once the assessee treats an expenditure to be non-revenue or capital in nature in its books of account, the same could not be allowed as revenue expenditure while computing its taxable income. Accordingly, the disallowance of Rs.60,79,24,773/- was made by the Assessing Officer.

5. Before the CIT(A), assessee raised similar points as made before the Assessing Officer and further pointed out that in the case of other sister concerns who were engaged in similarly placed retailing business, such expenditure has been held to be allowable as a revenue expenditure. The CIT(A) has noted such decisions in para 3.2 of his order and, in particular, he has referred to the decision of the Mumbai Bench of the Tribunal in the case of *Reliance Footprint Ltd. vs ACIT*, ITA No. 5997/Mum/2011 dated 23.10.2013. The CIT(A) has extracted the relevant portion of the order of the Tribunal in the case of *Reliance Footprint Ltd. (supra)*. Thereafter, the

CIT(A) also referred to another decision of the Mumbai Bench of the Tribunal in the case of *Reliance Supply Chain Solutions Ltd. vs DCIT*, ITA No. 5759/Mum/2012 dated 27.11.2013. Considering the said decisions of the Tribunal, which according to him have adjudicated similar issues, the CIT(A) directed the Assessing Officer to allow the impugned expenditure as revenue expenditure. Against such a decision of the CIT(A), Revenue is in appeal before us on the aforestated Grounds of appeal.

6. In this background, at the time of hearing, the learned representative for the respondent-assessee, at the outset, pointed out that the decision of the Tribunal in the case of *Reliance Footprint Ltd. (supra)* relied upon by the CIT(A) has since been affirmed by the Hon'ble Bombay High Court in ITA No. 948 of 2014 dated 05.07.2017. Thus, according to him, the order of CIT(A) deserves to be affirmed.

7. The Id. DR, on the other hand, did not dispute the factual matrix asserted by the learned representative, but relied on the order of the Assessing Officer in support of the case of the Revenue.

8. We have carefully considered the rival submissions. Insofar as the factual situation is concerned, it is not in dispute that the business of retailing being carried out by the assessee commenced in the earlier period. So far as the expenditure in question is concerned, the same is stated to have been incurred in the process of setting-up new retail outlets. It is also not in dispute that in the new outlets, assessee is continuing with its existing business of retailing. Therefore, factually speaking, the adding of new stores/outlets is nothing but an expansion of the existing line of business, i.e.

retailing. So far as the nature of expenditure of Rs.60,79,24,773/- is concerned, when the matter was specifically put to the learned representative, he invited our attention to page 44 of the Paper Book, wherein is placed the details of such expenditure. Notably, a perusal of the details reveal that the expenditure is on account of salaries, machinery and other repairs, travelling and conveyance, professional fee, electricity expenses, telephone expenses, etc. The items of expenditure clearly shows that it is revenue in nature and, in fact, we find that the Assessing Officer also does not dispute the said position. Pertinently, the objections of the Assessing Officer were – firstly, that the expenses are pre-operative in nature; secondly, that such expenses would provide enduring benefit to the business; and, thirdly, that assessee has itself treated such expenses in the books of account to be capital in nature by debiting it in capital work-in-progress account.

9. In the course of hearing, the learned representative was asked to refer to the details of 'Project Development' expenditure, the head under which the said expenditure has been debited. In this context, our attention was invited to page 45 of the Paper Book, wherein is placed the details of the amount debited under the head 'Project Development' expenditure, *inter-alia*, showing the opening balance, the head-wise details of expenses incurred during the year as also the expenses capitalised and thereafter, the closing balance. The learned representative also pointed out that so far as expenditure of capital nature is concerned, the same have been duly capitalised and not claimed as revenue expenditure. It is only the expenses of revenue nature, though debited in the books of account as capital work-in-progress, that the same have been claimed as revenue expenditure u/s

37(1) of the Act in the return of income. In our view, so far as the objection of the Assessing Officer, based on the treatment accorded by the assessee in its books of account is concerned, the same cannot be determinative of the issue on hand inasmuch as it is the applicable legal position which would govern the allowability of expenditure and not merely the manner in which it has been treated in the account books. For this aspect, a reference can be made to the reasoning laid down by the Hon'ble Supreme Court in the case of *Taparia Tools Ltd. vs JCIT, 372 ITR 605 (SC)*.

10. So far as the stand of the Revenue that it provides enduring benefit to the business of the assessee is concerned, the same, in our view, does not *ipso facto* justify the treatment of such expenditure as capital in nature having regard to the facts of the case. Notably, in the instant case, as we have inferred earlier, the business of retail is already set-up and the impugned expenditure, which is otherwise revenue in nature, relates to expansion of the existing line of business and not for a new line of business. Thus, even if such expenditure was to provide an enduring benefit to the business, the same is in revenue field and thus is liable to be treated as revenue expenditure. In this context, a gainful reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Empire Jute Co. Ltd., 124 ITR 1 (SC)*. Furthermore, it is nobody's case that the expenditure in question, which we have already enumerated above, results in creation of any fixed or an enduring asset so as to be capitalised. Thus, the objections raised by the Assessing Officer, in our view, have been rightly negated by the CIT(A).

11. Moreover, the CIT(A) has followed the decision of the Tribunal in the case of *Reliance Footprint Ltd. (supra)*, wherein also similar issue has been decided in favour of the assessee. Pertinently, the Hon'ble Bombay High Court in its order dated 05.07.2017 (*supra*) upheld the decision of the Tribunal in the case of *Reliance Footprint Ltd. (supra)*. For the said reason also, we find no reason to depart from the conclusion drawn by the CIT(A).

12. Before parting, we may also state that at the time of hearing, the learned representative has referred to the following decisions of the Tribunal in similarly placed situations in the case of sister concerns of the assessee, wherein also expenditure of revenue nature incurred in the course of expansion of business have been held to be allowable u/s 37(1) of the Act:-

- i) Reliance Footprint Ltd., ITA No. 5997/Mum/2011 dated 23.10.2013;
- ii) Reliance Supply Chain Solutions Ltd., ITA No. 6342/Mum/2013 dated 25.03.2015;
- iii) Reliance Supply Chain Solutions Ltd., ITA No. 1273/Mum/2014 dated 13.08.2015;
- iv) Reliance Wellness Ltd., ITA No. 3444/Mum/2013 dated 09.09.2015;
- v) Reliance Home Store Ltd., ITA No. 5996/Mum/2011 dated 15.10.2015;
- vi) Reliance Home Store Ltd., ITA No. 6751/Mum/2013 dated 20.04.2016;
- vii) Reliance Gems and Jewels Ltd., ITA No. 3855/Mum/2013 dated 28.10.2015

13. In view of the aforesaid discussion, in our view, the order of CIT(A) deserves to be affirmed. We hold so.

14. Thus, the appeal of the Revenue in ITA No. 1160/Mum/2016 is dismissed.

15. Insofar as the appeals in the case of M/s. Reliance Digital Retail Ltd. and M/s. Reliance Hyper Realty Ltd. being ITA Nos. 1159/Mum/2016 and 1161/Mum/2016 respectively are concerned, it was a common point between the parties that the facts and circumstances in the said appeals are *pari materia* to those considered by us in the case of M/s. Reliance Fresh Realty Ltd. bearing ITA No. 1160/Mum/2016 above, therefore, our decision therein shall apply mutatis mutandis to the said appeals also.

16. Resultantly, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 16<sup>th</sup> May, 2018.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 16<sup>th</sup> May, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai