

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “I”, MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.4518/Mum/2016 (Assessment Year- 2011-12)

DCIT- 4(2)(1) 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s Narmal Bang Securities Pvt. Ltd., 5-A, Khatau building, Alkesh Dinesh Modi Marg, Fort, Mumbai-400011 PAN:AAACN7369L
(Appellant)		(Respondent)

Revenue by : Shri Rajat Mittal (DR)

Assessee by : Shri Anant Pai (AR)

Date of hearing : 28.02.2018

Date of Pronouncement : 06.04.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue under section 253 of Income Tax Act ('the Act') is directed against the order of Ld. Commissioner of Income-Tax (Appeals)-9, Mumbai, [for short the ld. CIT(A)] dated 23.03.2016 for Assessment Year 2011-2012 passed under section 143(3) of the Act. The assessee has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O. to allow the entire Advertisement Expenses of Rs. 2,22,05,987/- as revenue expenditure in the year under consideration even though the assessee had debited only Rs. 74,01,996/- in the Profit & Loss Account and considered Rs. 1,48,03,992/- as deferred revenue expenditure and shown under the head Miscellaneous Expenses in the Balance Sheet as on 31.03.2011."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) further erred in not taking into account the comments of the Assessing Officer before allowing the claim of the assessee. "

2. Brief facts of the case are that the assessee company is engaged in Broking and Capital Market Activities. The assessee filed its return of income for relevant Assessment Year on 29.09.2011 declaring loss of Rs. 2,39,54,017/-. The assessment was completed on 3rd March 2014 under section 143(3). The assessing officer while passing assessment order besides the other additions and disallowance disallowed advertisement expenses of Rs. 1,48,03,991/-. On appeal before Commissioner (Appeals) the disallowance on account of advertising expenses were deleted. Thus, aggrieved by the order of Id. Commissioner (Appeals) the revenue has filed present appeal before us.
3. We have heard the Id. Departmental Representative (DR) for the Revenue and Ld. Authorized Representative (AR) of the assessee and perused the material available on record. The Ld. DR of the Revenue submits that the learned Commissioner (Appeals) erred in deleting the entire disallowance on account of advertisement expenses, when the assessee has debited only Rs. 74,01,996/- in the profit and loss account and remaining amount of Rs. 1,48,03,992/- was treated as deferred revenue expenditure. The assessee has not filed the income tax return for subsequent assessment year showing that the similar amount was not claimed in subsequent assessment year. On the other hand the learned AR of the assessee supported the order of Commissioner (Appeals). The learned AR further submits that assessee is in the business of share broking and share trading activities. For the year under consideration assessee incurred expenditure on account of advertisement to increase the business activities. All

expenses incurred by the assessee on advertisement expenses are revenue in nature and is allowable in the year it was incurred. In support of his submission the learned AR of the assessee relied upon the decision of coordinate bench of the Tribunal in case of Reliance Wellness Ltd Versus DCIT in ITA No. 3444/M/2013& 4273/M/2013 dated 9 September 2015.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. The assessing officer during the assessment proceeding noted that the assessee has claimed advertisement expenses of Rs.74,01,996/- in its profit and loss account. The assessee considered Rs.1,48,03,992/- as deferred revenue expenditure. Thereby the assessee claimed expenditure of Rs. 2,22,05,987/- on account of advertisement expenditure in its computation of total income. The assessee was asked to substantiate its contention. The assessee filed its reply dated 15 February 2014. In the reply the assessee contended that the assessee has incurred Rs. 2,22,05,988/- as advertisement expenses and claim the same while computing the total income. The assessee further explained that for accounting purpose they have deferred the said expense in three parts out of which two-third expenses was debited in subsequent year. As these expenses will not allowable in subsequent assessment year because it was treated as previous year expenses, thus, fully allowable in the year under consideration. The submission of the assessee was not accepted by assessing officer holding that the assessee has debited only Rs.74,01,996/- in its profit and loss account for the year under

consideration, hence, the assessee was allowed the amount of expenses to that extend only. The remaining amount of Rs. 1,48,03,991/-was disallowed. On appeal before Id Commissioner (Appeals) the assessee urged during the under consideration the assessee incurred various type of advertisement in print media, television, display & bard on street and banners etc. In in order to determine allowability of expenditure under the Income tax Act, mandates the nature of expenses whether it is capital or revenue in nature. The assessee further explained that assessee is in the business of share broking and trading activities, the assessee incurred expenses to increase revenue of the assessee. The assessee further explained that the expenditure incurred is not capital in nature. Expenditure is not personal in nature, incurred in the previous year related to the relevant assessment year. Expenditure is incurred wholly and exclusively for the purpose of business. The Id. Commissioner (Appeals) observed that an inference can be drawn that by showing this expenditure in the spread over manner in the books of account, the assessee had initially intended to make such an option. However, the assessee abandoned the same before reaching the crucial stage inasmuch as, in the income tax return, filed by the assessee; it chose to claim the entire expenditure in the year in which it was spent. The assessee invoked the provision of section 37 of the Act. The learned Commissioner (Appeals) further observed that assessing officer was bound to carry out the assessment by applying the provisions of Income tax Act and not to go behind the return of income furnished by assessee. The Act

entitles the assessee to claim the entire expenditure in the manner it is claimed by the assessee. The learned Commissioner (Appeals) also concluded that the assessee is following the Mercantile system of accounting. The assessee incurred the entire expenditure during the relevant financial year and made the entire payment in full during the relevant assessment year itself.

5. We have noted that the coordinate bench of Tribunal in Reliance Wellness Ltd (supra) while considering the ground of appeal related with allowability of expenditure held that the expenditure is allowable in the year in which expenditure was made irrespective of the fact that assessee has given dual status of such expenditure in its books of account reserve is a computation of income filed along with return. Thus, considering the decision of ratio of coordinate bench we find that the ld. Commissioner (Appeals) appreciated the facts in correct perspective. Thus, we do not find any merit in the ground of appeal raised by the revenue.
6. In the result appeal filed by the revenue is dismissed

Order pronounced in the open court on 6th day of April 2018.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

Mumbai; Dated 06/04/2018

S.K.PS

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER

(Asstt.Registrar)
ITAT, Mumbai