

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्दादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 289/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

M/s. V.R. Power Equipments Pvt. Ltd., 702, Elements Mall, DCM, Ajmer Road, Jaipur.	बनाम Vs.	The Pr. CIT-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AACCV 8974 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta (Advocate)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 15.05.2018.
घोषणा की तारीख / Date of Pronouncement : 16/05/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the revision order passed under section 263 of the IT Act dated 27th February, 2017 of Principal CIT-I, Jaipur for the assessment year 2012-13. The assessee has raised the following grounds of appeal :-

- “ 1. That the impugned order u/s 263 dated 27.02.2017 is bad in law and on facts of the case for want of jurisdiction and for various other reasons and hence the same may kindly be quashed.
- 2.1. That the Id. Pr. CIT-I, Jaipur is erred in law as well as on the facts of the case in invoking S. 263 of the Act. The same is being purely contrary to the provisions of law, therefore, the impugned order u/s 263 of the Act kindly be quashed.

2.2. That the Id. Pr. CIT-1, Jaipur is erred in law as well as on the facts of the case in taking the action u/s 263 of the Act on the allegation that :

(a) The assessee company debited interest on Service Tax & TDS amounting to Rs. 72,813/- in the P & L account, which is not allowable as expenses, as the same is penal in nature and therefore was to be disallowed but erroneously allowed by the AO.

(b) The assessee has incurred ISO certification expenses amounting to Rs. 1,08,500/- and claimed the entire expenses treating the same as revenue expenditure.

Which are contrary to the facts and such a finding being perverse, the impugned action is bad in law without jurisdiction and being void ab initio, the impugned order u/s 263 of the Act kindly be quashed.

3. That the Id. Pr. CIT-1, Jaipur is erred in law as well as on the facts of the case in setting aside the assessment to be made afresh with the direction to re-examine the issue in the light of his observation. The same is being purely contrary to the provisions of law, therefore, the impugned order u/s 263 of the Act kindly be quashed.

4. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

2. At the time of hearing, the Id. A/R of the assessee has submitted that in the set aside proceedings consequent to the impugned order, the AO has already allowed the claim of the assessee regarding interest on Service Tax and TDS amounting to Rs. 72,813/-, the issue raised in ground no. 2.2(a) of the grounds and, therefore, the assessee is pressing the only issue which is raised in ground no. 2.2 (b).

3. The Id. A/R has submitted that the Principal CIT has held that the expenditure incurred on ISO Certificate is not revenue expenditure and, therefore, only 1/3rd of the said expenditure can be allowed for the year under consideration. Hence, the AO was directed to disallow 2/3rd of the said expenditure of Rs. 1,08,500/-. He has further contended that since the Certificate is only for 3 years and it is not a

renewable certificate, therefore, the expenditure incurred by the assessee for obtaining the ISO Certificate is of revenue expenditure. In support of his contention he has relied upon the decision of Hon'ble Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd. 349 ITR 582 (Kar.) and submitted that an identical issue has been decided by the Hon'ble High Court in treating the said expenditure as an allowable revenue expenditure.

3.1. On the other hand, the Id. D/R has relied upon the impugned order of the Pr. CIT and submitted that the ISO Certificate expenses have been incurred to derive benefit of enduring nature. There is no denial that the assessee would get the benefit of creating of positive image for the products for which ISO Certificate was issued and hence the said expenditure is capital in nature and at the most can be spread over to the period for which the certificate is issued.

4. We have considered the rival submissions as well as the relevant material on record. The assessment was originally completed under section 143(3) of the Act on 23rd December, 2014. Subsequently, on perusal of the record, the Pr. CIT has noted that the expenses on account of interest on Service Tax and TDS amounting to Rs. 723,813/- as well as the expenses incurred for ISO Certificate amounting to Rs. 1,08,500/- has been claimed in the Profit & Loss account. However, the same are not allowable being the interest not allowable as firstly, the class of expenditure is penal in nature and secondly it is capital in nature. The Pr. CIT, accordingly issued a show cause notice dated 11.01.2016 to revise the assessment in respect of these two expenses allowed by the AO. As far as issue of allowability of expenses on account of interest on Service Tax and TDS, the assessee has not pressed this issue and, therefore, the only issue which was raised before us by the assessee at the

time of hearing is regarding the issue of allowability of the expenses incurred for ISO Certificate. The Pr. CIT has considered this issue in para 6 and 6.1 of the impugned order as under :-

“ 6. With regard to the issue of ISO certification expenses amounting to Rs. 1,08,500, assessee contended that such expenditure has neither created any fixed asset nor any intangible. It was also contended that assessee need to incur this expenditure regularly at the time of renewal.

6.1. I have considered the submission made by assessee. The ISO certification expenses are not revenue expenditure and incurred to derive benefits of enduring nature. As per assessee's own submission it was incurred to create positive image for the products of the assessee. Further the renewal is not required annually instead it was issued for three years. Hence it is an expenditure which enhanced the goodwill of the products of the assessee and benefit of which are not confined to one financial year. Therefore, it is definitely not of the category of revenue expenditure. Accordingly, instead of allowing the entire quantum of expense in a single year, it is required to proportionately amortise the same over the duration of the benefit derived. In the instant case, ISO certification expenses have been incurred for a period of 3 years and accordingly, 2/3th of the total expense was to be disallowed but the AO has allowed the entire expenditure.”

Thus the Pr. CIT was of the view that this expenditure was incurred by the assessee to derive benefit of enduring nature and, therefore, only 1/3rd of the said expenditure is allowable for the year under consideration and 2/3rd is to be

disallowed. It is not in dispute that the Certificate in question was issued only for 3 years and the same is not a renewable certificate. Therefore, having regard to the tenure of the certificate, it cannot be held that the expenditure was incurred in creating any asset or to derive any benefit of enduring nature. The Hon'ble Karnataka High Court in case of CIT vs. Infosys Technologies Ltd. (supra) while considering an identical issue has held in para 11 to 13 as under :-

"11. The only reason assigned by the Assessing Officer to hold that the expenditure incurred towards acquisition of membership of various clubs by the respondent-assessee is that the benefit conferred on the assessee is of enduring nature and, therefore, it is a capital expenditure. Further, the appellate authority on consideration of the contention of the learned counsel appearing for the parties, held that the expenditure incurred towards acquisition of membership of the club is revenue expenditure as the acquisition of membership of the club would only confer certain benefits which cannot be said to be so enduring as to amount to capital expenditure, it would only enable the assessee to avail of benefits conferred by the club due to acquisition of membership. In the decision relied upon by the learned counsel appearing for the assessee in *Empire Jute Co. Ltd.'s case (supra)*, the hon'ble Supreme Court has held that the expenditure towards acquisition of club is not capital expenditure but is revenue expenditure. The Income-tax Appellate Tribunal has confirmed the order passed by the appellate authority. It is well settled that factors to be borne in mind while considering the question as to whether the expenditure is revenue or capital in nature has been laid down by the hon'ble Supreme Court in *Empire Jute Co. Ltd.'s case (supra)*, which read as under :

- "(i) It is not a universally true proposition that what may be a capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer.
- (ii) There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring

benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.

- (iii) What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency."

12. In the decision relied upon by the learned counsel appearing for the assessee, as referred to above, it has been specifically held that acquisition of membership of the club would be revenue expenditure and not capital expenditure and the decision of this court relied upon by the learned counsel appearing for the assessee in *Wipro Systems (supra)* would also show that the amount spent towards the membership acquired by the assessee should be treated as revenue expenditure. Therefore, the concurrent finding arrived at by the appellate authority and the Income-tax Appellate Tribunal that the expenditure incurred for acquisition of membership of the club is revenue expenditure, is justified and cannot at all said to be perverse or arbitrary so as to call for interference in this appeal. Accordingly, we answer the first substantial question of law in all the appeals against the Revenue and in favour of the assessee.

Re : Substantial question of law (2) in I. T. A. No. 3011 of 2005

13. The assessee had spent a sum of Rs. 11,99,000 towards the acquisition of ISO 9001 certificate and claimed that the said expenditure is revenue expenditure. Further, the Assessing Officer by order dated February 27, 1997, held that the certificate, which had been issued on February 15, 1993, was valid for a period of three years ; that the assessee had incurred an expenditure of Rs. 11,99,000 towards acquisition of the said certificate and acquiring of the certificate has certainly created the benefit of enduring nature to the assessee and, accordingly, held that the expenditure is capital in nature and disallowed the same and added Rs. 11,99,000 to the total income. Further, the appellate authority, by its order dated July 13, 1998, after considering the contention of learned counsel appearing for the parties, held that the ISO certificate was granted after review of the procedures and set up of the business ; therefore, it is a representation of the examination carried out and the satisfaction obtained by the issuing authority and obtaining such certificate do not create any asset of enduring nature. The expenditure is of revenue in nature incurred wholly and exclusively for the purpose of the appellant and, therefore, it should be treated as revenue expenditure. The appellate authority has also held that the said certificate issued was valid for a period of three years and advantage of the certificate would not persist beyond the period for which the certificate is given. The Income-tax Appellate Tribunal has confirmed the said order passed by the appellate authority by holding that the expenditure incurred towards acquisition of ISO-9001 certificate is revenue in nature."

Accordingly, in view of the decision of the Hon'ble Karnataka High Court, we find that the nature of expenditure cannot be held as capital in nature or to derive benefit of enduring nature, therefore, the claim of the assessee cannot be disallowed. Accordingly, we set aside the impugned order of Id. Pr. CIT, qua this issue.

5. Rests of the grounds are not pressed by the assessee. Accordingly, we do not propose to go to the issue raised in the other grounds.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 16/05/2018.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 16/05/2018.
das/

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-M/s. V.R. Power Equipments Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent-The Pr. CIT-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 289/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar