

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT AND
SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1413/Del./2015
Assessment Year 2007-2008

Times Publishing House Ltd., 10, Daryaganj, New Delhi - 110 002. PAN AACT0028J	vs.	The DCIT, Circle-25(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Anil Jain, C.A.
For Revenue :	Shri Sridhar Dora, Sr. D.R.

Date of Hearing :	04.12.2018
Date of Pronouncement :	12.12.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-19, New Delhi, Dated 03.11.2014, for the A.Y. 2007-2008, challenging the disallowance of business expenditure on publicity amounting to Rs.13,37,691/-.

2. The A.O. disallowed Rs.13,37,697/- being the expenses incurred on publicity of Times of India, Kannada edition. The A.O. in the assessment order noted that from the details furnished by the assessee, it has been found that the assessee has claimed selling and distribution expenses of Rs.28,35,880/-. The month wise details of these expenses were called for and from the same it was found that the assessee has claimed Rs.14,62,540/-, in the month of March. However, in other months the 'selling and distribution' expense was very less. The details are noted in the impugned order. It was, therefore, noted that assessee has claimed huge expense in the Month of March, 2007. The explanation of assessee was called for in which the assessee explained that the selling and distribution expenses were incurred during the period January 2007 to March 2007 towards the promotion of "Times of India Kannad" Edition launched in January, 2007 were accounted for in the Month of March, 2007. It is further submitted that income on this account has been accounted for during the year itself. The A.O, therefore, noted that the above

amount includes the expenses related to promotion and 'publicity' of 'Times of India Kannad' Edition. As is clear from the nature of business of the assessee, that from 01.04.2006 onwards, the assessee has remained only distributor of Times India News Paper and now it is no more responsible for rendering/providing services to Bennett Coalman & Co. in the form of marketing and advertising. Therefore, the claim of 'promotional' and 'publicity' expense of Times of India 'Kannad' Edition are not incurred 'wholly and exclusively', for the purpose of the business of the assessee. The A.O. noted that the assessee has produced copy of letter of Bennett Coleman and Co. Ltd., regarding discontinuation of availing the staff services from the assessee-company. It was, therefore, clear that the arrangement of providing services to Bennett Coleman & Co. Ltd., has terminated w.e.f. 01.04.2006. Therefore, the assessee was not required to incur the 'promotion and publicity expense' on Times of India Kannad Edition. The A.O. also noted that the expenses is of capital nature. Incurring of one time expense for getting enduring benefit in the form of

increased sale is an expense of 'capital nature'. In this case the assessee has incurred huge expenditure of the publicity of Times of India Kannad Edition and hence, it is clear that the expenses was incurred to establish and launch a New Edition of the News Paper. It was, therefore, held to be capital in nature. The A.O. accordingly, disallowed an amount of Rs.13,37,691/- after excluding the average of selling and distribution expenses.

3. The assessee submitted before Ld. CIT(A) that promotion of Bennett Coalman & Co. Ltd. (BCCL)'s publications is an inherent part of the assessee's business. It was also contended that the expenditure does not constitute capital expenditure. In the course of appeal, the assessee filed an application for admission of additional evidence consisting of letter of the Company to the assessee and reply to BCCL which was sent for the comments of the A.O. The A.O. submitted his remand report which is reproduced in the appellate order in which the A.O. stated that at most, the letter

filed by the assessee-company proves the genuineness of the expenses. But, it would not supports the argument of the assessee that the expense is revenue in nature. The letter supports the finding of the AO because it is a new product and assessee-company was entrusted with the responsibility of advertisement before launching the product. Therefore, A.O. opposed to the request of the assessee. The Ld. CIT(A) noted that huge expenses have been debited in the month of March, 2007 on account of expenses towards promotion of Times of India, Kannada edition. The assessee failed to controvert the findings of the A.O. The expenses were found to be capital in nature as they provide enduring benefit to the assessee. It was, therefore, held that expenses were not incurred wholly and exclusively for the purpose of the business of the assessee. The addition was confirmed. Appeal of assessee has been dismissed.

4. Learned Counsel for the Assessee submitted that expenses were incurred wholly and exclusively for the purpose

of the business. No capital asset have been created out of the expenses incurred. So, it is part of the business expenditure of the assessee. He has relied upon decision of Hon'ble Calcutta High Court in the case of CIT vs. Berger Paints (India) Ltd., 254 ITR 503 ICal.) in which the question of law answered by the Hon'ble Calcutta High Court was (i) *“Whether, in the facts and circumstances of the case, the Tribunal was justified in law in allowing a sum of Rs.8,29,723/- as revenue expenditure.”* The Learned Counsel for the Assessee submitted that the Hon'ble Calcutta High Court *“answered the question in favour of the assessee”*. The relevant findings of the Hon'ble Calcutta High Court are as under :

“It is also the settled law that an advertisement expense of the nature in question here cannot compulsorily be made to be treated by the assessee as a long-term capital expenditure. On the other hand, advertisement expenses are normally to be treated as revenue expenditure since the memory of the purchasing market is short and

advertisement is needed from year to year and cannot be made once for all in any single particular year.”

4.1. Learned Counsel for the Assessee, therefore, submitted that the addition may be deleted.

5. The Ld. D.R. on the other hand, relied upon the Orders of the authorities below.

6. We have considered the rival submissions and perused the material available on record. It is an admitted fact that assessee-company is engaged in the business of publishing its weekly news paper Financial Times as well as distribution of news papers and other publications. The A.O. examined the expenditure incurred by assessee on account of selling and distribution expenses because huge expenses of Rs.14,62,540/- were incurred in the month of March, 2007. The assessee however explained that the expenses were incurred during the period January, 2007 to March, 2007 towards the promotion of Times of India, Kannad Edition launched in 2007 and the expenses were accounted for in the

month of March, 2007. The A.O. in the remand report did not doubt the genuineness of the expenses incurred by the assessee. Further, the authorities below found that it is capital in nature because it provides enduring benefit to the assessee. This question is answered by the Hon'ble Calcutta High Court in the case of CIT vs. Berger Paints (India) Ltd., (supra) in favour of the assessee. Considering the nature of business of assessee and that expenses in question were incurred for earning business income, therefore, it was not capital in nature and would not provide any enduring benefit to the assessee. The assessee submitted before A.O. that income on this account has been accounted for during the year itself. The submissions of assessee has not been disputed by the authorities below. Therefore, on the same Head when income is offered for taxation and expenses are incurred to earn the income, therefore, such expenses were clearly revenue in nature. The authorities below have failed to point-out as to which capital have been generated out of incurring these expenses. Therefore, the authorities below were not justified to

sustain the addition. We, accordingly, set aside the Orders of the authorities below and delete the addition.

7. In the result, appeal of Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 12th December, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.