

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6457/Del./2015
(ASSESSMENT YEAR : 2012-13)**

DCIT, Circle 16 (1), vs. M/s. Mail Today Newspapers Pvt. Ltd.,
New Delhi. F – 26, Connaught Place,
New Delhi – 110 001.

(PAN : AAFCM1533J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Advocate
Shri Shailesh Gupta, Advocate
REVENUE BY : Shri Amit Katoch, Senior DR

Date of Hearing : 31.01.2019

Date of Order : 25.02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, DCIT, Circle 16 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 15.09.2015 passed by the Commissioner of Income-tax (Appeals)-6, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition amounting to Rs.12,86,04,197/- made by the AO by treating advertisement and sales promotion expenses as revenue expenses

relying completely on the submissions of the appellant and completely ignoring the reasons given by the AO?

2. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of publication of newspaper and periodicals. Assessing Officer, noticing huge expenses of Rs.12,86,04,197/- on account of advertisement and sales promotions, proceeded to hold that since expenses incurred by the assessee on advertisement and sales promotion are to protect the brand name of the assessee giving it enduring benefit, the same are treated as capital in nature and thereby disallowed the same and consequently made addition thereof to the total income of the assessee.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition made by the AO by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset it is brought to our notice by the ld. AR for the assessee that the issue as to disallowance of advertisement and sales promotion expenses has already been decided in favour of the assessee in AY 2010-11 by the co-ordinate Bench of the Tribunal which order has been further upheld by the Hon'ble High Court, there is no merit in the appeal filed by the Revenue.

6. Perusal of the *order dated 27.04.2017 passed by the co-ordinate Bench of the Tribunal in ITA No.4252/Del/2014 in assessee's own case for AY 2010-11* goes to prove that the issue has been decided in favour of the assessee by following the decision rendered by the Hon'ble Supreme Court in case of *Empire Jute Company Limited vs. CIT 124 ITR 1*. Operative part of the findings returned by the Hon'ble Apex Court as well as co-ordinate Bench of the Tribunal are extracted for ready perusal as under :-

“12. Hon'ble Supreme Court in case of Empire Jute Co. Ltd vs. CIT (supra) has held as under:

“By the court: (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 assessee's business to be carried on more efficiently or more profitability 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 outgoing an account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the jurisdic 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.”

13. Respectfully following same, we are of considered opinion that expenditure incurred by assessee towards advertisement and sales promotion are for the purposes of making customers aware of assessee's existence and its products/services, including improvement, if any, in the market which may or may not result in sales. We are, therefore, inclined to uphold findings of Ld. CIT(A). Accordingly, ground raised by revenue stands dismissed.”

7. Decision rendered by the co-ordinate Bench of the Tribunal in assessee's own case for AY 2010-11 has been affirmed by ***Hon'ble Delhi High Court in ITA 52/2018 vide order dated 17.01.2018.*** In the subsequent year, the Revenue itself has accepted the advertisement and sales promotion expenses as revenue expenses.

8. Following the decision rendered by the co-ordinate Bench of the Tribunal, affirmed by Hon'ble Delhi High Court in assessee's own case for AY 2010-11, we are of the considered view that

advertisement and sales promotion expenses incurred by the assessee are merely for the purpose of creating awareness in the minds of the customers as to the existence of the assessee and its products/services/importance, if any, in the market which may or may not yield any result/sales. Consequently, finding no illegality or perversity in the impugned order passed by the Id. CIT(A), present appeal filed by the revenue is hereby dismissed.

Order pronounced in open court on this 25th day of February, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of February, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-6, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**