

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos. 3850& 3782 /Del/2013
Assessment Years: 2008-09& 2009-10**

Dy. Commissioner of Income-tax, Circle -9(1), New Delhi.	vs	SQL Star International Ltd., 201, Plot No.C-4, 5 & 6, Aggarwal Cyber Plaza, Netaji Subhash Place, Pitampura, New Delhi. PAN: AAACS0372C
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Appellant

Respondent

Assessee by: None
Department by: Shri N.K. Bansal, Sr. DR

Date of Hearing: 28.02.2019
Date of Pronouncement: 22 .03.2019

ORDER

PER NARASIMHA K. CHARY, JM

These two appeals are filed by the revenue challenging the order both dated 28.3.2013 in Appeal Nos. 189/10-11 and 161/11-12 passed by the Learned Commissioner of Income-tax(Appeals)-XII, New Delhi {"CIT(A)"} for Assessment Years 2008-09 and 2009-10 respectively. Since the issue involved in both the years is same, we find it convenient to dispose of them by a common order.

2. Brief facts of the case are that the assessee is a company and is engaged in the business of training and education in computer software. Assessee filed their return of income on 30.9.2008 and 20.9.2009 for AYs 2008-09 and 2009-10 respectively declaring nil income. During the course of the asstt. proceedings, learned AO noticed that the assessee claimed an amount of Rs.2,70,66,047/- (2008-09) and Rs.2,79,73,486/- (2009-10).

2008-09	2009-10
- Internal Procedures - Rs.70,70,338/-	- Salary & Benefits – Rs.2,30,92,684/-
- Intranet - Rs.9,75,121/-	- Communication - Rs.15,57,517/-
-Actionable Training Rs.1,96,24,000/-	- Other Expenses - Rs.2,79,73,486/-
Total Rs.2,76,69,459/-	
Less: Rs.6,03,411/-	
Net Total Rs.2,70,66,048/-	

Assessee explained to the learned AO that pursuant to the AS-26 – Intangible Assets carried forward the above revenue expenditure as Intangible Assets-in-Progress in the balance sheet and the nature of expenditure is revenue and though it is capitalized to comply with AS-26, the same is allowable u/s 37 of the Income-tax Act, 1961 (“the Act”). Assessee further submitted that there is no prohibition or requirement under the Income-tax Act that for expenditure to be allowed as revenue, it should not have been capitalized in the books.

3. Learned AO, however, did not agree with the assessee since the assessee themselves capitalized the expenditure, the same cannot be treated as revenue and, therefore, he disallowed it and added it back to the income of the assessee.

4. Aggrieved by the said addition, the assessee preferred appeal and submitted that as held in the case of Kedar Nath Jute Mfg. Co. Ltd. vs CIT, 82 ITR 363, the existence or absence of entries is neither decisive nor conclusive factor to determine the allowability or otherwise of an expenditure and one has to look into the expenditure. Learned CIT(A) by placing reliance on the decision reported in the case of Tuticorin Alkali & Chemicals Ltd. vs CIT (1997) 227 ITR

172(SC) and also in the case of Kedar Nath Jute Mfg. Co.Ltd. vs CIT, 82 ITR 363(SC) found that all the expenditure would result in improvement of assessee's business by increasing its sales and consequently profitability, leading to more income and, therefore, it is a revenue expenditure allowable u/s 37 of the Act.

5. Challenging the same, revenue preferred these appeals before us stating that the assessee himself capitalized the expenditure in their books of accounts, as such, assessee now cannot contend that it is revenue in nature.

6. We have gone through the record. Since none appeared on behalf of the assessee, we proceed to decide the appeals on merits. Learned AO enumerated the expenditure and it is under the heads of 'salary and benefits', 'communication', 'Internal procedures' 'intranet' 'Actionable Training'. Except the fact that the assessee capitalized this expenditure in their books of accounts, there is nothing to suggest that by nature this expenditure is capital. By no stretch of imagination, can it be said that the salary, employee cost, communication and other expenses would inure any enduring benefit to the assessee. The nature of the expenditure is revenue beyond any reasonable doubt.

7. Merely because the assessee capitalized the same in their books of accounts, it cannot be said that it is not allowable u/s 37 of the Act. Further the assessee explained that pursuant to AS-26, carried forward revenue expenditure is shown as intangible assets in progress in the balance sheet and as a matter of fact but for compliance with AS-26, this is revenue expenditure, as such, we are in agreement with the assessee that there is no prohibition for expenditure to be allowed as revenue, it should not have been capitalized in the books.

8. With this view of the matter, we do not find any illegality or irregularity in the reasoning or conclusions reached by the learned CIT(A) and, therefore, while upholding the same, we dismiss grounds of appeal of the revenue.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the Open Court on 22nd March, 2019.

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 22nd March, 2019.

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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