

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH 'F',  
NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI K. N. CHARY, JUDICIAL MEMBER

ITA No. 724/DEL/2016  
[Assessment Year: 2010-11]

The D.C.I.T.  
Circle - 16(2)  
New Delhi

Vs.

M/s Miele India Pvt Ltd  
Ground Floor, 1 to 5, Copia  
Corporate Suites, Plot No. 9  
Jasola, New Delhi

PAN No. AAFCM 3435 R

(APPELLANT)

(RESPONDENT)

Appellant by : Shri Surender Pal, Sr. DR  
Respondent by : Shri Piyush Kaushik, Adv

Date of hearing: 04/04/2019  
Date of Pronouncement: 11/04/2019

**ORDER**

**PER N. K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - 19, New Delhi dated 03.11.2015 pertaining to A.Y 2010-11.

2. Ground No. 1 relates to the deletion of addition of Rs. 3,50,51,978/- on account of pre-operative expenses made by the Assessing Officer. Ground No. 2 relates to the deletion of addition of Rs. 66,39,950/- treated by the Assessing Officer as expenditure on advertisement, the assessee is building a brand image of the parent company and hence capital in nature.

3. Briefly stated, the facts of the case are that the assessee is engaged in trading of high-end kitchen appliances, cooling and coffee machines and laundry and floor care appliances. The return for the year under consideration was E-filed on 27.09.2010 declaring loss of Rs. 7.83 crores. The return was selected for scrutiny assessment and, accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has not commenced business during the first 7 months of the year under consideration. Accordingly, the Assessing Officer asked the assessee to reply as to why all the expenses for the first 7 months should not be treated as

preoperative expenses, which need to be amortized over a period of five years.

5. The assessee filed reply contending that sales had commenced in F.Y. 2008-09 and high value purchase order of Euro 52,853 was placed in the month of March 2009. The key managerial employees had joined the assessee company in F.Y. 2008-09. Infrastructure and administration was set up for smooth functioning in assessment year 2008-09. It was strongly contended that since the business had been set up in the earlier assessment year, therefore, no adverse inference should be drawn and the expenses incurred and claimed by the assessee are not pre-operative expenses.

6. The contention of the assessee did not find any favour with the Assessing Officer, who completed assessment by disallowing expenditure of the first 7 months as pre-operative expenses.

7. Proceeding further, the Assessing Officer found that the assessee is incurring high advertisement and sale expenditure without actual commencement of business, thereby building a brand image of its principal. According to the Assessing Officer, such expenditure should

be capitalized as intangible asset and depreciation should be claimed on such expenditure. The Assessing Officer concluded by holding that the expenditure is for future and of enduring nature. Accordingly, he disallowed the expenditure amounting to Rs. 66,39,950/-.

8. The assessee strongly agitated the matter before the ld. CIT(A).

9. After considering the facts and submissions, the ld. CIT(A) called for remand report from the Assessing Officer. The Assessing Officer, in his remand report, conceded that the company has commenced its business operations during F.Y. 2009-10 and the first two purchase orders from Ms Navin Electrotech Pvt Ltd and M/s Dhawal International Electronic Pvt Ltd have been received during the previous year 2008-09. Considering the facts of the case in the light of the remand report, the ld. CIT(A) deleted the addition on account of pre-operative expenses.

10. On the issue of disallowance of administrative expenses, the ld. CIT(A) held as under:

"I have gone through the arguments of the appellant and observations of the Assessing Officer. The Assessing Officer has observed that by incurring expenditure, the Assessing Officer is building a brand image of the parent company. If that was the case, then the Transfer Pricing Officer should have made an adjustment in respect of the same. However, the TPO has given a clear order on the basis of facts & circumstances. Moreover, the appellant has shown that incurring of expenses to the tune of nearly Rs. 72,24,922/- is not isolated or extraordinary. In fact, during the succeeding years, similarly high expenses have been incurred. Advertisement expenses howsoever high may be, have been held to be of revenue nature simply because they do not have lasting value.

a. Delhi High Court in the case of CIT v CitiFinancial Consumer Finance Limited (ITA No. 1820/2010,1974/2010, 01/2011, 05/2011 held as follows:

*13. Applying the aforesaid principle to the facts of this case, it clearly emerges that the expenditure on publicity and advertisement is to be treated as revenue in nature allowable fully in the year in which it was incurred. Concededly, there is no advantage which has accrued to the assessee in the capital field. This expenditure was incurred to facilitate the assessee's trading operations. No fixed capital was created by this expenditure. We may also add here that in the Income-*

*tax laws, there is no concept of deferred revenue expenditure. Once the assessee claims the deduction for whole amount of such expenditure, even in the year in which it is incurred, and the expenditure fulfils the test laid down under section 37 of the Act, it has to be allowed. Only in exceptional cases, the nature mentioned in Madras Industrial Corporation (supra), the expenditure can be allowed to be spread over that too when the assessee chooses to do so. (The decision has been subsequently affirmed by Supreme court.)*

*Considering the facts & circumstances of the case & various judicial pronouncements in the matter, the addition made by the Assessing Officer is deleted."*

11. In so far as Ground No. 1 is concerned, the ld. DR strongly supported the findings of the Assessing Officer and the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

12. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. It would be pertinent to understand the chronological events from the date of incorporation and the same is as under:

<b>PARTICULARS</b>	<b>AV 2008-09</b>	<b>AV 2009-10</b>	<b>AV 2010-11</b>
Date of Incorporation	27 Sept., 07		
Date of allotment of PAN	15 Jan., 08		
Date of allotment of TAN	21 Jan., 08		
Importer Exporter Code(IEC)		7 Nov., 08	
Lease Deed executed with Regus Business Centre		16 June, 08	
Date of joining of MD		2 June, 08	
Lease Deed executed for premises at Commercial Plot, Jasola		16 Dec., 08	
Receipt of share application from Imanto AG		July 2008	
Resolution for opening of Bank Account		August, 08	
Agreement for outsourced employees (including drivers, advisors positioned at dealer's sites and chef)		22 Sept., 08	
Date of hiring of 6 senior employees		Middle of the year	
Date of first local purchase		27 Nov., 08	
Sales		14 Dec., 08 & 26	
Date of Customer Orders received from Dawar International Electronics Pvt Ltd		2 Jan., 09 & 22 Jan., 09	
Date of various purchase orders raised on Miele & Cie KG		18 March 2009	18 May, 09 & 14 July 09
Date of agreement with R&P Management Communications Pvt. Ltd			1 Aug, 09
Date of invoice raised by Miele & Cie KG pursuant to purchase order dated 18 March 2009			5 Aug, 09
Date of import of products for demonstration purposes from Miele & Cie KG			19 Aug, 09
Date of receipt of consignment from Miele & Cie KG against invoice dated 5 August 2009			22 Sept., 09
Distribution of product catalogues / information brochures for soliciting customer orders			Throughout the year

Date of launch of Experience Centre for dissemination and advertisement, publicity and marketing of products to potential customers (wrongly treated as commencement of business by the Id. AO in the assessment order)			29 Oct.,09
Date of invoice raised on Dawar International Electronics Pvt Ltd			28 Nov.,09 & 24 Dec.,09 & '30

13. If the afore stated chronology of events is considered in the light of the remand report of the Assessing Officer, there remains no doubt that the assessee has commenced its business in earlier assessment year. Therefore, expenses considered as pre-operative expenses by the Assessing Officer have to be treated as legitimate business expenditure for the year under consideration. The findings of the Id. CIT(A) cannot be faulted with. Ground No. 1 according dismissed.

14, In so far as expenditure on advertisement is concerned, the Id. DR vehemently stated that the expenses have been incurred by the assessee for brand building of its principal and the Assessing Officer has rightly treated the same as capital expenditure since the benefits derived by the assessee are of enduring in nature. The Id. counsel for the assessee relied upon the findings of the Id. CIT(A) and stated that

by no stretch of imagination advertisement expenses can be considered as tangible asset.

15. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below qua the issue. It would be pertinent to mention here that during the course of assessment proceedings, the case was referred to the TPO and the TPO framed order u/s 92CA(3) of the Act on 09.01.2014 and no adverse inference was drawn in respect of I.T. notification by the assessee during the year under consideration. This shows that the TPO was satisfied with the AMP expenses incurred by the assessee and did not make any adverse comment in so far as the issue of brand building is concerned.

16. In our considered opinion, public memory is very short and, therefore, the companies have to incur advertisement expenditure year after year to keep products fresh in the minds of the public. In our considered opinion, such expenditure cannot partake the character of giving any enduring benefit. In our considered opinion, the Assessing Officer has grossly erred in treating such expenditure as intangible

asset and on facts of the case, the findings of the ld. CIT(A) needs no interference. Ground No. 2 stands dismissed.

17. In the result, the appeal of the revenue in ITA No. 724/DEL/2016 is dismissed.

**Order pronounced in the open court on 11.04.2019.**

**Sd/-**

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

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> April, 2019

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Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
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The date on which file goes to the Assistant Registrar for signature on the order	
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