

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2505/MUM/2018
Assessment Year: 2013-14**

Mazars
Esplanade House,
2nd floor, 29
HazarimalSomani Marg,
Fort, Mumbai-400001

PAN No. AATFM2606D
Appellant

Income Tax Officer Ward 17(2)(3),
AayakarBhavan, M.K. Road,
Vs. Mumbai-400020.

Respondent

Assessee by : Mr. M.M. Golvala &
Ms. Heta Shah, ARs
Revenue by : Smt. Jothilakshmi Nayak, DR

Date of Hearing : 26/09/2019
Date of pronouncement : 30/09/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax-57, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The 1st ground of appeal

The Assessing Officer erred in holding and Ld. CIT(A) erred in confirming that Marketing and Sales Promotion expenses amounting to Rs.14,09,532/- are incurred for the purpose of creating market visibility and brand building.

The 2nd ground of appeal

The Assessing Officer erred in holding and Ld. CIT(A) erred in confirming that Marketing and Sales Promotion expenses amounting to Rs.14,09,532/- have enduring benefit, and hence it is capital in nature.

The 3rd ground of appeal

The Ld. CIT(A) erred in holding that Marketing and Sales Promotion expenses were incurred for non-specific purposes.

The 4th ground of appeal

The Appellant submits the above disallowance of Rs.14,09,532/- be deleted.

3. The above grounds of appeal are adjudicated together as they address a common issue. Briefly stated, the facts are that the assessee filed its return of income for the assessment year (AY) 2013-14 on 30.09.2013 declaring loss of Rs.1,71,76,294/-. The assessee-firm is engaged in the business of consultants in corporate finance including financial and tax due diligence, internal control, internal audit, accounting and such other services.

During the year under consideration, the assessee has debited Rs.14,09,532/- under the head 'marketing and sales promotion' in the P&L account. During the course of assessment proceedings, the Assessing Officer (AO) observed that the expenses claimed of

Rs.14,09,532/- is for the purpose of creating market visibility and brand building which has got enduring benefit and not confined to the current assessment year only but for future assessment years and thus capital in nature. Accordingly, he made a disallowance of the above amount of Rs.14,09,532/-.

4. In appeal, the Ld. CIT(A) after examining the chart filed by the assessee came to a finding that the expenses were indeed in the nature of non-specific purposes. Observing that the AO is correct in his finding that these expenses were incurred for the purpose of creating market visibility and brand building, the Ld. CIT(A) confirmed the disallowance of Rs.14,09,532/- made by the AO.

5. Before us, the Ld. counsel for the assessee submits that as per the details filed before the AO and CIT(A), the nature of expense is for the business purpose and is revenue in nature. In this regard, reference is made by him to page 5-6 of the order dated 23.03.2018 passed by the CIT(A).

On the other hand, the Ld. DR submits that these expenses were incurred for the purpose of creating market visibility and brand building and therefore, the order passed by the CIT(A) be affirmed.

6. We have heard the rival submissions and perused the relevant materials on record. Indisputably, the nature of service in respect of the above expenses are viz. (i) Rs.2,20,000/- incurred for a programme called Stree Shakti sponsored by Mazars wherein women CFO, Managers, Directors were invited. Mr. Monish Chatrath delivered a

presentation on “Internal Audit- a necessity” at the programme. The programme was attended by lady managers from several leading companies, (ii) Rs.1,00,000/- incurred for subscription for mergers acquisition data base, (iii) Rs.5,43,288/- incurred for retainer fees to PR Agency and (iv) Rs.4,77,530/- incurred for sponsorship of CFO next programme in 3 cities which is attended by 150+ professional. Mr. Ravindra Rao made a presentation on “Basics of Risk Management”. CFO next is a programme which gives exposure to the second in command in the finance departments of leading companies in India and (v) Rs.44,944/- incurred for participation fee for full day programme on corporate laws.

A perusal of the relevant invoice filed by the assessee on the above clearly indicates that the expenses are revenue in nature and thus allowable.

In the case of *CIT v. Asian Paints (India) Ltd.* (2016) 75 taxmann.com 152 (Bom), it is held that expenditure incurred by assessee-company on corporate advertisement to maintain its corporate image which resulted in increased sale of products was to be allowed as revenue expenditure.

Similarly, in the case of *CIT v. Berger Paints (India) Ltd.* 254 ITR 503 (Cal), it is held that the expenditure in advertising is revenue expenditure.

Similarly, in *CIT v. Citi Financial Consumer Fin Ltd.* (2011) 335 ITR 29 (Delhi) it is held that expenditure on advertisement and publicity is revenue expenditure.

Therefore, considering the facts of the case in light of the decisions narrated hereinabove, we delete the disallowance of Rs.14,09,532/- made by the AO and allow the 1st, 2nd, 3rd and 4th ground of appeal.

7. The 5th ground of appeal

The Ld. CIT(A) erred in confirming the disallowance of unrecovered out-of-pocket expenses to the tune of Rs.3,04,841/-.

The 6th ground of appeal

The Appellant submits that unrecovered out of pocket expenses are deductible under Section 37 of the Act, or in the alternative, under Section 28 of the Act.

8. The assessee has debited an amount of Rs.3,04,841/- under the head 'out of pocket expenses'. In response to a query raised by the AO, the assessee filed a reply which has been extracted at para 6.2 of the assessment order. The AO observed that the assessee has merely given party-wise details of non-recoverable expenses and tried to explain that 'non-recoverable expenses' are incurred to maintain good relations with clients in the interest of future business. However, the AO was not convinced with the said explanation of the assessee for the reason that the concerned non-recoverable expenses are not supported by any verifiable documentary evidence. Therefore, he made a disallowance of Rs.3,04,841/-.

9. In appeal, the Ld. CIT(A) agreed with the reasons given by the AO that these expenses cannot be allowed u/s 37 as the assessee failed to provide documentary evidence.

10. Before us, the Ld. counsel for the assessee submits that detailed explanation was filed before the AO along with letter dated 26.02.2016. In this regard, reference is made by him to para 6.2 of the assessment order dated 13.03.2016. Further, the Ld. counsel submits that a statement giving details of 'out of pocket expenses incurred' and 'out of pocket expenses recovered' during the year ended 31.03.2013 were filed before the AO. Also the Ld. counsel filed a copy of the document entitled 'Governance, Risk and Internal Audit Services' in support of his contentions.

11. On the other hand, the Ld. DR submits that the document entitled 'Governance, Risk and Internal Audit Services' was not filed either before the AO or the CIT(A) and therefore, should not be taken cognizance of. Further reiterating that as no documentary evidence was filed before the AO or the CIT(A), it is submitted by the Ld. DR that the order passed by the Ld. CIT(A) be affirmed.

12. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the assessee has filed a statement giving details of 'out of pocket expenses incurred' and 'out of pocket expenses recovered' during the year ended 31.03.2013. Also the assessee filed a detailed reply before the AO in this regard *vide* letter dated 26.02.2016 which has been extracted at para 6.2 of the assessment order. A perusal of the above clearly indicates that the out of

pocket expenses of Rs.3,04,841/- is allowable. Considering the facts and circumstances of the case, we delete the disallowance of Rs.3,04,841/- made by the AO and allow the 5th and 6th ground of appeal.

13. In the result, the appeal is allowed.

Order pronounced in the open Court on 30/09/2019.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/09/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai