

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai**

**Before Shri Pramod Kumar, Vice President  
and Shri Ravish Sood, Judicial Member**

**ITA No.3264/Mum/2018  
(Assessment Year: 2014-15)**

DCIT-11(1)(2), Room NO.1, Ground Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai 400 020

Vs. M/s Samsonite South Asia Pvt. Ltd, 402, Akruti  
Star, Opp. Akruti Centre Point, MIDC,  
Andheri(East), Mumbai 400 093

PAN – AAACS8598L

**(Appellant)**

**(Respondent)**

Appellant by	: Shri Anoop Hiwase, D.R
Respondent by	: None
Date of Hearing	: 19.09.2019
Date of Pronouncement	: 30.09.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-18, Mumbai, dated 28.02.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 27.12.2016 for A.Y. 2014-15. The revenue has assailed the impugned order on the following grounds of appeal :-

- “1. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) failed to appreciate that, the assessee in into long term agreement with its parent company 'Samsonite Corporation' and also being the sole license holder of the said company in India; any expenses incurred by it in building of brand is nothing but in the form of intangible rights which are bound to give it enduring benefit over a period of time .

2. Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) is right in treating the capital expenses incurred by the assessee for creating intangible rights in its favour as deferred revenue expenses without appreciating the fact that a number of invoices of such expenses mentioned the nature as 'cost of branding'.
3. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) failed to appreciate the fact that the decision of the Hon'ble ITAT, Mumbai K Bench, in assessee's own case for A.Y. 2012-13 was not accepted by the department and the revenue has preferred further appeal before the Hon'ble Bombay High Court (Lg. No. 69/2018 dated 21.03.2018)."

2. Briefly stated, the assessee company which is incorporated in India with its shareholding vested with two major groups viz. (i) Samsonite Group (60% holding); and (ii) Tainwala Group (40% holding) is engaged in the business of manufacturing and distribution of molded luggage, soft luggage, footwear and other travel accessories. The assessee company had e-filed its return of income for A.Y. 2014-15 on 29.11.2014, declaring its total income at Rs. 110,46,01,680/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee pursuant to a 'royalty agreement' with its parent company viz. "Samsonite Corporation" was licensed to manufacture, market and distribute samsonite brand of luggage and travel accessories in India and to the other Samsonite Group Companies worldwide. It was observed by the A.O, that the assessee had debited 'advertisement expenses' of Rs. 27,14,31,534/- and 'sales promotion expenses' of Rs. 3,94,00,441/- in its profit and loss account for the year under consideration. As was discernible from the records, the aforesaid expenses had witnessed a whopping 68% increase as in comparison to the immediately preceding year. On a perusal of the details of expenses which were booked by the assessee under the head advertisement and sales promotion expenses, the A.O was of the view, that the same had also contributed towards brand promotion. In fact, the A.O held a strong conviction that though the expenses incurred by the assessee towards conducting surveys and training, educating and motivating of the sales personnel as well as the dealers/distributors had facilitated increase in the sales, but at the same time, those had also contributed towards brand building. Accordingly, the A.O was of the view, that as the expenses incurred by the assessee had also contributed towards creation of intangible rights in the form of brand value which were assignable over a period of time, therefore, the expenditure to the said extent having been incurred in the capital field was liable to be disallowed. However, the A.O was of the view that the assessee would be entitled

for depreciation on the capitalized expenditure, as the same qualified as an eligible block of intangible assets. Also, not being oblivious of the fact, that part of the aforesaid expenses had been incurred by the assessee for promoting its sales for the year under consideration, therefore, the A.O was of the view that the entire amount of the expenditure could not be characterized as a capital expenditure. Accordingly, on the basis of his aforesaid deliberations, the A.O on an ad hoc basis disallowed part of the expenses by treating the same as being in the nature of a capital expenditure, as under :-

Sr.No.	Nature of Expenses	Amount Allowed as Revenue (In Rs.)	Remarks
1.	Advertisement Expenses	135,715,767/-	Allowed 50% of the total Advt. Expenses incurred i.e. 50% of Rs. 271,431,534/-
2.	Sales Promotion Expenses	2,36,40,265/-	Allowed 60% of the total Sales Promotion Expenses incurred i.e. 60% of Rs. 39,400,441/-
Total Expenses Allowed		15,93,56,032/-	

As such, out of the total “advertisement and sales promotion expenditure” of Rs. 31,08,31,975/-, a sum of Rs. 15,93,56,032/- was allowed to be claimed as a revenue expenditure, while for the balance amount of Rs. 15,14,75,943/- was considered as a capital expenditure and accordingly disallowed. However, depreciation of Rs. 3,78,68,986/- i.e. @ 25% on the aforesaid amount of capitalized expenditure of Rs. 15,14,75,943/- was allowed by the A.O while computing the total income of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was observed by the CIT(A), that the Tribunal in the assessee's own case for A.Y. 2012-13, had vide its order passed in ITA No. 1934/Mum/2017, dated 01.09.2017, had concluded, that the ‘advertisement and sales promotion expenses’ were rightly claimed by the assessee as a revenue expenditure. Accordingly, following the view taken by the Tribunal the ‘net addition’ of Rs. 11,36,06,957/- made by the A.O was vacated by the CIT(A).

5. The revenue being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. As the assessee despite having been put to notice about the hearing of the appeal has failed to put up an appearance before us, therefore, we proceed with as per Rule 25 of the Appellate Tribunal Rules, 1963 and dispose off the appeal after hearing the appellant revenue and perusing the orders of the lower authorities.

6. The Learned Departmental Representative (for short 'D.R') relied on the order of the A.O. However, the Ld. D.R did not controvert the observation of the CIT(A) that the issue involved in the present appeal was squarely covered by the order of the Tribunal in the assessee's own case for A.Y. 2012-13.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Our indulgence has been sought by the revenue, to adjudicate, as to whether the assessee's claim towards 'advertisement expenses' and 'sales promotion expenses' had rightly been allowed by the CIT(A) by treating the same as a revenue expenditure. As observed by us hereinabove, the A.O holding a conviction that part of the aforesaid expenses incurred by the assessee were towards brand building, had thus, on an ad hoc basis disallowed part of the expenses by characterizing the same as having been incurred by the assessee in the capital field. Accordingly, out of total "advertisement and sales promotion expenditure" of Rs. 31,08,31,975/-, a sum of Rs. 15,93,56,032/- was allowed by the A.O as a revenue expenditure, while for the balance amount of Rs. 15,14,75,943/- was considered by him as a capital expenditure and disallowed. At the same time, depreciation of Rs. 3,78,68,986/- i.e. @ 25% of the aforesaid amount of capitalized expenditure of Rs. 15,14,75,943/- was allowed by the A.O while computing the total income of the assessee. On appeal, as observed by us hereinabove, the CIT(A) by following the order passed by the Tribunal in the assessee's own case for A.Y 2012-13 had vacated the aforesaid disallowance.

8. We have deliberated at length on the issue involved in the present appeal in the backdrop of the facts discernible from the record and the contentions advanced by the authorised representatives for both the parties. In our considered view, the issue involved in the present appeal is squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2012-13 in ITA No. 1934/Mum /2017, dated 01.09.2017. In the aforesaid case, it was observed by the Tribunal, that the 'advertisement and sales promotion expenses' incurred by the assessee were allowable as a revenue expenditure. The Tribunal while concluding as hereinabove, had observed as under :-

"24. Up on careful consideration, we note that assessee has incurred expenditure on advertisement and sales promotion. The assessing officer & DRP have held on an adhoc basis that

a certain portion out of the above is aimed at brand building and the same is to be held as capital expenditure and the assessee can be granted depreciation there upon. When this is considered in light of the fact that the brand doesn't belong to the assessee and it is not the case of the revenue that assessee has incurred expenditure aimed at benefiting the associated enterprise this addition is clearly not sustainable. When the brand doesn't belong to the assessee there is no question of incurring expenditure over building of brand and assessee creating any intangible rights assignable over a number of years.

25. Moreover, it is implicit in the order of the revenue that these are deferred revenue expenditure for the purpose of the business of the assessee as they are allowing depreciation there upon. Further, there is no question of disallowance of the same as it is also settled law that in taxation laws there is no concept of deferred revenue expenditure. The case laws referred by the learned Counsel of the assessee duly indicate that expenditure incurred by the assessee company to maintain its corporate image which resulted in increased sales of the product is to be allowed as revenue expenditure. We find that these case laws are duly applicable to the facts of the present case.

26. Hence in the background of aforesaid discussion and precedents, we set aside the orders of the authorities below which ITA No.1934/Mum/2017. M/s. Samsonite South Asia Pvt. Ltd. 29 allocated ad hoc percentage out of advertisement and sales promotion as depreciable capital expenditure. We hold that the entire expenditure is a revenue expenditure allowable as such.

27. In the result, this appeal filed by the assessee stands allowed."

As the facts and the issue involved in the present appeal remains the same, therefore, we respectfully follow the aforesaid order of the Tribunal in the assessee's own case for A.Y. 2012-13. Accordingly, finding no infirmity in the order of the CIT(A), we uphold the same. Resultantly, finding no merit in the appeal of the revenue, the same is dismissed.

Order pronounced in the open court on 30.09.2019

Sd/-  
(Pramod Kumar)  
VICE PRESIDENT

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 30.09.2019

PS. Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**