

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.5317/M/2015
Assessment Year: 2011-12**

M/s. God Frey Philips India Ltd., Sahara Road, Chakala Andheri (E), Mumbai – 400 049 PAN: AABCG 4768K	Vs.	Addl CIT 8(1), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Yogesh Thar, A.R.
Revenue by : Shri Choudhary Arun Kumar Singh, D.R.

Date of Hearing : 18.07.2019

Date of Pronouncement : 13.09.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 12.08.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. At the time of hearing, the ground No.1, 2 & 3 were not pressed by the counsel of the assessee and therefore the same are dismissed as not being pressed.

3. The issue raised in ground No.3 is against the confirmation of disallowance of Rs.78,12,000/- by Ld. CIT(A) as made by the AO under section 43B of the Act on account of leave encashment expenses claimed by the assessee on payment basis by holding

that assessee has already claimed the expenses on accrual basis in the earlier assessment years.

4. The facts in brief are that the assessee has been claiming the leave encashment on the basis of actuarial valuation but after amendment of section 43B of the Act, the claim was made on the payment basis from A.Y. 2003-04 onwards. The AO disallowed 1/3rd of the total deduction claimed of Rs.234.36 lakhs which comes to Rs.78,12,000/-. The said order was affirmed by the Ld. CIT(A).

5. The Ld. A.R., at the outset, pointed out that the identical issue involved in A.Y. 2003-04 in ITA No.1079/M.2007 and A.Y. 2004-05 in ITA No.5569/M/2007 has been restored to the file of the AO. The Ld. A.R. prayed that in the present appeal also the issue may kindly be restored to the AO to be decided on the same lines as in the earlier year.

6. The Ld. D.R., on the other hand, relied on the order of authorities below.

7. After hearing both the parties and perusing the material on record, we observe that the identical issue stands decided in earlier year 2003-04 wherein the issue has been restored to the file of the AO to examine and allow the leave encashment which has not been claimed in the earlier year. The operative part of the decision of co-ordinate bench of the Tribunal in ITA No.1071/M/2007 is reproduced below:

“2.8 The dispute raised in the ground No.8 is regarding disallowance of leave encashment expenses. The AO noted that the assessee had been claiming expenses on account of leave encashment on the basis of actuarial valuation report but from A.Y.2003-04 the assessee started claiming deduction on the actual payment basis.

The AO observed when the assessee had made claim on the basis of actuarial valuation in the earlier year, the claim now being made on the basis of actual payment could lead to double deduction. As per the AO the assessee was not able to furnish the details of double deduction. He therefore proceeded to make disallowance on estimate basis. It was observed by him that an employee on average worked in private sector for 20 - 25 years. Since the assessee had been making claim on the basis of actuarial valuation for the last 7 years he estimated that 1/3rd of actual payment may have been claimed on the basis of actuarial valuation. Accordingly disallowances to the extent of 1/3rd amounting to Rs.20 lacs and Rs.12.33 lacs respectively for the two years. In appeal CIT(A) confirmed the orders of AO aggrieved by which the assessee is in appeal before the tribunal.

2.8.1 We have heard both the parties, perused the records and considered the matter carefully. The dispute is regarding disallowance of part of the claim relating to leave encashment. The assessee had been making the claim earlier on the basis of actuarial valuation but consequent to the amendment of [section 43B](#) the claim was being made on payment basis from A.Y.2003-04. The AO has made estimated disallowance out of the claim made on payment basis on the ground that part of the payments made may relate to earlier year when these were allowed on actuarial basis. The AO has made disallowance on estimate which cannot be sustained. Only the payment which had actually been allowed earlier can be disallowed. In our view matters require fresh examination and disallowance has to be restricted to the amounts allowed in the earlier year. We therefore set aside the order of CIT(A) and restore the issue to the file of AO for passing a fresh order after necessary examination and after allowing opportunity of hearing to the assessee.”

8. Since the facts in the present case before us are identical to the facts in the case as decided by co-ordinate bench of the Tribunal in A.Y. 2003-04, we, therefore, respectfully following the decision of co-ordinate bench of the Tribunal restore the issue to the file of the AO to decide the same on the same lines. In other words to allow the claim of the assessee on account of leave encashment which has not been claimed in the earlier year on the basis of provisions created based upon actuarial report. Consequently ground no. 3 is allowed for statistical purposes.

9. The issue raised in ground No.4 is against the confirmation of action of AO in capitalizing the expenses incurred on repair and maintenance of building amounting to Rs.2,72,25,410/- by Ld. CIT(A).

10. The facts in brief are that during the course of assessment proceedings, the AO observed that the assessee has incurred substantial expenditure on repairing the rental as well as own premises. The AO observed that the assessee incurred expenses of Rs.52,58,076/- on rental premises, the details whereof are given in page 8 of the assessment order. Similarly, the AO observed that the assessee has incurred a sum of Rs.2,19,67,334/- on own premises, the details whereof are given on page No.9 of the assessment order. According to the assessee, the expenditure was incurred on the routine repairs and maintenance which has not resulted into creation on any enduring benefit or of any capital asset in the hands of the assessee. However, according to the AO, the assessee has changed the interior of the building and only the outer walls remained as they were and thus came to the conclusion that the assessee has created new assets. Accordingly, the AO disallowed the expenses to the tune of Rs.2,72,25,410/- comprising Rs.52,58,076/- on rented premises and Rs.2,19,67,334/- on own premises.

11. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing that the assessee company has made purchases of large number of items which has been utilised in creation of chambers, new electric and sanitary fittings in toilets and premises and resulted in enduring benefit to the assessee. The Ld. CIT(A) while dismissing the appeal of the assessee relied on the decision of Hon'ble Madras High Court in the case of CIT vs. Mahalakshmi Textile Ltd. 56 ITR 0256, Hon'ble Punjab & Haryana High Court in the case of Silver

Green Enterprises vs. CIT 85 ITR 0578 (1972) and Hon'ble Kolkata High Court in the case of Humayun Properties Ltd. vs. CIT 44 ITR 0073 (1962), Hon'ble Allahabad High Court in the case of Kanpur Agencies Pvt. Ltd. vs. CIT 70 ITR 0337 (1968).

12. The Ld. A.R. vehemently submitted before us that the expenditure incurred by the assessee on repairs of own building have been incurred on renovating the existing building of the assessee, details whereof were given in page No.7 of the assessment order. The Ld. A.R. while taking us through the items purchased for repairing the building submitted that it comprised of purchase of lights, internal alteration of office premises, wooden paneling, hinges, sanitary and plumbing works, false ceiling, replacement of wooden flooring, wooden quoting, floor wiring, electric fitting and wiring etc. which were incurred only to repair the building and made it more convenient for carrying on the business of the assessee and thus has not resulted into any enduring benefit or creation of any new assets. The Ld. A.R. relied on a series of decisions in defence of his argument namely;

1. ITO vs. IBP Co. Ltd. (20 ITD 470) (Cal.),
2. CIT vs. Armour Consultants (P.) Ltd. (355 ITR 418) (Mad – HC)
3. CIT vs. Delhi Press and Samachar Patra (P.) Ltd. (2010) 322 ITR 590 (Delhi – HC)
4. CIT vs. Bharat Aluminium Co. Ltd. (292 ITR 600) (Delhi HC)
5. Evergreen Engineering Company Pvt. Ltd. Addl CIT (ITA No.117 of 2015)
6. DCIT vs. Patel Aluminium Pvt. Ltd. (ITA No.1598 of 2010)
7. DCIT vs. Sachdev Gateways & Gateways Pvt. Ltd. (ITA No.5637 of 2008 (Mumbai Trib.))

8. DCIT vs. The Sesakaria Biswan Sugar Factory Ltd. (ITA No.5270 of 2009 (Mumbai Trib.)
9. United Hotels Ltd. vs. Addl. CIT (ITA No.3225 of 2012)
10. DCIT vs. Rhodia Speciality Chemicals India Ltd. (ITA No.830 of 2014) (Mumbai Tri.)
11. Nagpur Power & Industries Ltd. vs. DCIT (ITA No.5808 of 2013 (Mumbai Tri.)
12. Malabar Hill Club Ltd. vs. DCIT (ITA No.4507/Mum/2012)
13. International Tobacco Co. Ltd. vs. JCIT (ITA No.277/Mum/2013)

The Ld. A.R. submitted that in all the above decisions it has been held that the expenses incurred by the assessee on office renovation, partition flooring, internal decoration etc. are of revenue in nature and has to be allowed as such . The Ld. A.R., therefore, prayed that the disallowance out of repairs of Rs.2,19,67,334/- may kindly be deleted. Similarly, in respect of the repairs on leased premises the detail whereof is given on page No.8 of the assessment order and comprised of mainly replacement of work stations, cabinet, glass fixing, painting, paneling, dismantling and laying of foundations and granite, brickworks, replacement of worn out carpets, plumbing, civil works, false ceiling work, paneling, partitions, door windows and glazed flooring etc. The Ld. A.R. submitted that the said premises were taken on lease and the expenditure was incurred to render the premises in a usual and usable condition by the assessee. The Ld. A.R. submitted that the said expenditure is purely of revenue nature and has to be allowed. The Ld. A.R. relied on the following decisions:

1. CIT v. Amway India Enterprises [(2012) 346 ITR 341 (Delhi HC)]
2. CIT v. Coromandel Fertilizers Ltd. (2014) 367 ITR 132 (AP HC)

3. CIT v. Ayesha Hospitals (P.) Ltd. (2007) 292 ITR 266 (MAD.)
4. DCIT v. Lazard India (P.) Ltd. (2010) 41 SOT 72 (Mumbai Tribunal)
5. Urban Infrastructure Venture Capital Lid v. DCIT (2014) 150 ITD 502 (Mumbai Tribunal)
6. DCIT v. Chayya Lakshmi Creations (P) Ltd. [ITA No.250 of 2010 (Hyderabad Tribunal)]
7. DCIT v. Eureka Forbes Ltd. [ITA No.2126 of 2013 (Kolkata Tribunal)]
8. ACIT vs. M/s. CB Richards Ellis South Asia Pvt. Ltd. (ITA No.3940/Del/2011) (Del. -Trib.)

The ld. AR, therefore, prayed that the repairs of rented premises may be allowed by directing the AO to delete the disallowance.

13. The Ld. D.R., on the other hand, relied on the order of authorities below by submitting that the assessee has incurred huge repairs and carried out extensive renovation of the building thus which has increased the life of the premises and has resulted into enduring benefit which were accrued to the assessee over a longer period of time than the current year. The Ld. D.R., therefore, submitted that the order of Ld. CIT(A) may kindly be sustained.

14. We have heard the rival submissions of both the parties and perused the material on record including the case laws relied upon by both the parties. The undisputed facts are that the assessee has incurred expenses on repairs and renovation of rented as well as own premises. The assessee has incurred Rs.2,19,67,334/- on repairs and renovation of own building and we find that the expenditure the details whereof were given on the page No.9 of the assessment order are in the nature of internal modification, lighting of the office paneling pin board,

hinges, sanitary and plumbing works, replacement of wooden flooring etc. and in no way constitute capital expenditure. In our opinion, the said expenditure is in the nature of a routine repairs though it has been carried out on extensive basis. In our opinion, the said expenditure has not resulted in the creation of any enduring benefit to the assessee or resulted in creation of any new assets. We are therefore of the view that the order passed by the Ld. CIT(A) upholding the order of AO is not correct and can not be sustained. In the case of ITO vs. IBP Co. Ltd. (supra) the Hon'ble Kolkata High Court has held that advantage obtained by the assessee by redesigning the premises was for the purpose of business and not for acquisition of any capital assets and was primarily motivated for achieving better efficiency and efficacy in the working of the assessee and in that sense the addition derived was in a commercial sense and it did not result in any benefit of enduring nature. In the case of CIT vs. Delhi Press and Samachar Patra (P.) Ltd. (supra) the Hon'ble Delhi High Court has upheld the order of Tribunal wherein the Tribunal has allowed the expenditure incurred to preserve and maintain the assets which was incurred by way of water proofing of roof with stones, re-enforcement of old beams in which bars and plasters were corroded relaying of worn out floor, repairing and relaying/corroding of rods, running inside the press compound, repairing and replacement of works wash room, wood work and repairing and relaying of boundary wall etc. The High Court has dismissed the appeal of the Revenue by observing that no substantial question of law arises from the said appeal. Similarly, we have perused the other decisions relied upon by the assessee wherein the similar expenditure

were held to be of revenue nature. We, therefore, are of the considered view that the repairs of Rs.2,19,67,334/- is of revenue nature and AO is directed to allow the same. As regards the rented premises, we observe that the assessee has incurred the expenses of Rs.52,58,076/- to make the rented premises suitable for carrying on its activities. The expenditure on repairs included various items of expenditure such as replacement of work stations, cabinet, glass fixing, painting, paneling, dismantling and laying of foundations and granite, brickworks, replacement of worn out carpets, plumbing, civil works, false ceiling work, paneling, partitions, door windows and glazed flooring etc. After examining the nature of expenses incurred by the assessee, we find that the said expenditure was incurred on building which was taken on rent and to make it usable for the purpose of business and therefore any expenditure incurred in the nature of repairs and major renovation can not be treated as capital in nature as the assessee has not created any assets. In the case of CIT vs. Amway India Enterprises (supra) Hon'ble Delhi High Court has held that expenses incurred on flooring partition, wiring, fall ceiling, roofing, air conditioning, electric wiring and laying network for setting up of computers and purchase of furniture are of revenue nature. The Hon'ble Delhi High Court has followed the decision in the case of CIT vs. Line Pens (P) Ltd. [2008] 306 ITR 182 (Del) and thus held the expenditure to be revenue in nature. Similarly, in the case of CIT vs. Coramondal Fertilizer Ltd. the Hon'ble Andhra Pradesh High Court has held that expenditure incurred for wooden partition, electric wiring, power connection, interior lay out etc. are in the nature of revenue expenditure. Similarly, in the case

of CIT vs. Ayesha Hospitals (P.) Ltd. (supra) the Hon'ble Madras High Court has held that expenditure on painting and relaying damage floor and partition of leased premises can not be considered as capital in nature. In view of the ratio laid down by the various High Courts, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition. In the result, the ground raised by the assessee is allowed.

15. The issue raised in ground no 5 is consequential in nature and needs no adjudication. Similarly the ground no. 6 is of general nature and is not required to adjudicated.

16. In result the appeal if the assessee is partly allowed.

Order pronounced in the open court on 13.09.2019.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.09.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.