

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M BALAGANESH, AM

आयकर अपील सं./ ITA No. 1993/Mum/2019

(निर्धारण वर्ष / Assessment Year 2014-15)

AHA Holdings Private Limited 2 nd Floor, Trade View Building, Oasis Complex, Kamala Mills, Gate No.4, Pandurang Budhkar Marg, Lowe Parel, Mumbai-400 013	बनाम/ Vs.	The Pr. Commissioner of Income Tax-6, Room No. 515, 5 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai -400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAFCS6404E		

अपीलार्थी की ओर से / Appellant by	:	Shri Hioro Rai, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajeev Harit, CIT DR

सुनवाई की तारीख / Date of hearing:	09.01.2020
घोषणा की तारीख / Date of pronouncement:	04.02.2020

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष /

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of revision order passed by Pr. Commissioner of Income Tax -6, Mumbai [in short PCIT], in Appeal No. PCIT-6/u/s.263/AHA Holdings/2018-19/275 vide dated 13.03.2019. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-6(1)-1, Mumbai (in short DCIT/ AO) for the A.Y. 2014-15 vide order dated 19.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the revision order passed by Pr. CIT under section 263 of the Act and setting aside the assessment made by the DCIT, Circle 6(1)-1, Mumbai dated 19.12.2016 under section 143(3) of the Act. For this, the assessee has raised the following three grounds: -

"1. The learned Pr. CIT was not justified in passing an order under section 263 setting aside the assessment made under section 143(3) of the Act. The assumption of jurisdiction under section 263 and also the order passed thereon are illegal, invalid and unjustified.

2. The learned Pr. CIT was not justified in holding that "no examination on the above discussed issues has been done before the order was passed on 19.12.2016 in this case under section 143(3) of the Act.

3. The learned Pr. CIT was not justified in holding that "Hence, "Branding and Advertisement" expenses of ₹2,36,33,769/- towards promoting its subsidiary M/s Smaaash Entertainment Pvt. Ltd. should have been disallowed".

The reasons given by him in this regard are incorrect and unjustified."

3. Brief facts are that the original assessment completed by the DCIT, Ward 6(1)-1, Mumbai under section 143(3) of the Act vide order dated 19.12.2016. Subsequently, the PCIT issued show cause notice under section 263 of the Act dated 12.02.2019 vide No. PCIT-6/263/AHA.2018-19/318, wherein he noticed that the assessee company has incurred expenses in respect of branding and advertisement towards promoting for its subsidiary M/s Smaaash Entertainment Pvt. Ltd. amounting to ₹2,36,33,769/- and according to PCIT, these investments for subsidiary are capital in nature and hence, not allowable. He also noted that these are business promotion expenses incurred for promoting / advertising for subsidiary and not for enhancing business of the assessee and even, these are not business expenses. He observed this fact in Para 2 and 3 of the show cause notice which read as under: -

"2. Perusal of details reveals that as per Note 4.23 of the Financial Statement, the assessee company has incurred 'Branding and Advertisement' cost of ₹2,36,33,769/- towards promoting its subsidiary M/s Smaaash Entertainment Pvt. Ltd.

3. It is seen that said promotion expenses have been incurred for

promoting/ advertising of subsidiaries and not for enhancing the business of assessee company. Further, it is seen that you have invested in here in these subsidiaries. Even if expenses are investment in subsidiary companies, are capital in nature and the same cannot be claimed as expenses in profit and loss account. Hence, 'Branding and Advertisement' expenses in profit and loss account. Hence, 'Branding and Advertisement' expenses of ₹2,36,33,769/- towards promoting its subsidiary M/s Smaaash Entertainment Pvt. Ltd. should have been disallowed. It appears that during the course of assessment proceedings, this aspect has not been given due consideration."

4. The assessee before PCIT claimed that these expenses are for promoting subsidiary company and incurred in the original course of business and are allowable expenses under section 37(1) of the Act. Further, it was stated that the AO during the course of assessment proceedings had examined the complete details of these expenses and assessee also submitted a legal justification for the same for allowability of the sale promotion expenses of ₹2,36,33,769/-. But the PCIT noted that the AO has not carried out any examination and hence, he set aside the

assessment order and directed the AO to pass fresh order after considering the findings given in Para 4.2 and the relevant Para read as under: -

"4.2 It is seen that said promotion expenses have been incurred for promoting/ advertising of subsidiaries and not for enhancing the business of assessee company. Further, it is seen that Assessee has invested large amount in these subsidiaries. Even if investments are done in subsidiary companies, the same are capital in nature and the same cannot be claimed as expenses in profit and loss account. Hence, 'Branding and Advertisement' expenses of ₹2,36,33,769/- towards promoting its subsidiary M/s Smaaash Entertainment Pvt. Ltd. should have been disallowed. It appears that during the course of assessment proceedings, this aspect has not been given due consideration."

Aggrieved, now, assessee came in appeal before Tribunal against the revision order passed by PCIT under section 263 of the Act.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We noted from the records



that original assessment was completed by the AO under section 143(3) of the Act vide order dated 19.12.2016 and AO during the course of assessment proceedings issued notice dated 29.07.2016 vide No. DCIT-6(1)(1)/142(1)/29/2016-17 asked for the details of sales promotion expenses vide point No.12 as under: -

"12. Details of Sales promotion expenses."

6. According to the learned Counsel, the same was replied by filing the details of sales promotion expenses vide letter dated 26.08.2016. The details of sales promotion expenses are given vide point No. 7 as under: -

"7. Details of Sales Promotion expenses:

Enclosed herewith vide Annexure 9."

7. The relevant details of sales promotion expenses are also enclosed at page 6 of assessee's Paper Book (which is part of the assessment record also) which read as under: -

<i>Sum of Amount</i>	
<i>Ledger Name</i>	<i>Total</i>
<i>Advertisement & Publicity</i>	<i>2,812,899</i>
<i>Business promotion expenses</i>	<i>16,109,118</i>
<i>Master Blaster Tournament Pp</i>	<i>1,419,563</i>
<i>Mb Winner Gifts</i>	<i>1,983,389</i>
<i>Prepaid Expenses</i>	<i>800,000</i>
<i>Professional Fees</i>	<i>80,899</i>
<i>Ps3</i>	<i>(21,380)</i>
<i>Service Tax Input Credit</i>	<i>276,480</i>
<i>Service Tax On Reverse</i>	<i>105,164</i>



Charge-local	
Tournament Winners	638,337
Grand total	24,204,468

8. Further, the supplied details are also given at pages 7 to 10 of the assessee's Paper Book which were filed before the AO during the course of assessment proceedings. Subsequently, on enquiry by the AO the same was replied by the assessee vide letter dated 13.12.2016 and the justification on sales promotion expenses was given, explaining the commercial expenditure as under: -

"During the year under consideration, the assessee has incurred ₹2,42,04,468/- as sales promotion expenses. Details of the same have been already been submitted to you vide our earlier submission dated 26th August, 2016. On perusal of the same, you will notice that the said expenses are in the nature of promotion of business of assessee's subsidiaries viz. Smaaash Entertainment Private Limited, Creo Lifestyles private Limited and others. The assessee is the promoter of its subsidiaries as well as it has invested a large stake in them. Further, these companies have been incurring losses as it's still their initial years from commencement of their business and also some of the business of the assessee's



subsidiary company being capital intensive in nature, the assessee has incurred certain promotion expense for promoting/advertising their business. Accordingly, these expenses have been incurred by the assessee to give a hitch to their business and the same is mad in nature of commercial expediency.”

9. The legal position was also explained by explaining the provision of section 37(1) of the Act as well as the decision of Hon'ble Supreme Court in the case of SA Builders Limited vs. CIT (2007) 288 ITR 1 (SC) and also the decision of Hon'ble Delhi High court in the case of Punjab Stainless Steel Industries vs. ACIT [2010] 324 ITR 396 (Delhi) and also another decision of Hon'ble Delhi High Court in the case of Dalmia Cement (P.) Ltd. vs. CIT (2002) 121 Taxman 706 (Delhi), wherein Hon'ble Delhi High Court has considered the issue of reasonableness of expenditure by observing as under:-

"The jurisdiction of the revenue is confined to deciding reality of the expenditure, namely, whether the amount claimed as deduction has been factually expended or laid down and whether it has been wholly and exclusively for the purpose of business. The reasonableness of the expenditure can be gone into only



for the purpose of determining whether, in fact, the amount is spent. Once it is established that there is a nexus between the expenditure and the purpose of business, the revenue cannot justifiably claim to put itself in the armchair of a businessman or in the position of the board of directors and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of the case.”

10. The assessee before the PCIT during the revision proceedings also explained vide letter dated 25.02.2019 explaining the sales promotion expenses and said that sales promotion expenses were incurred by the assessee for promotion of business of assessee's subsidiaries Smaaash Entertainment Pvt. Ltd., Creo Lifestyles Private Limited and others. It was explained before PCIT that the assessee is a promoter of its subsidiaries as well as it has invested large stake in them. Further, these companies have been incurring losses as it's still their initial years from commencement of their business and also some of the business of the assessee's subsidiary companies being capital intensive in nature, the assessee has also incurred certain business promotion expenses for promoting their business. Hence, it was explained that these expenses have been incurred by the assessee to give promotion to their business and the same is in the nature of commercial



expediency. We noted that the revision order passed by PCIT only talks about the claim of expenditure as capital in nature but has not held how it is capita in nature. Further, according to PCIT, the expenditure incurred is branding and advertisement expenses towards promoting its subsidiaries, which has not been held for non-business purposes. But we failed to understand that how this is a branding expenditure whereas this is clearly sales promotion expenses as from the very nature of expenses explained by assessee. Even otherwise, this issue has been considered by the AO as detailed out above and assessee has filed complete details before the AO on specific query and even justification was filed by the assessee regarding claim of this expenses before the AO during the scrutiny assessment proceedings and thereafter the AO has framed assessment under section 143(3) of the Act. Hon'ble Bombay High Court in similar situation has considered the issue, wherein the AO has examined the details and allowed the claim of the assessee in the case of CIT vs. Gabriel India Ltd. 203 ITR 108 (Bom), the another case law of Hon'ble Bombay High Court in the case of CIT vs. Gera Development P. Ltd. 387 ITR 691 (Bom.), wherein the similar issue was considered and held as under: -

"7. We have considered the rival submissions. With regard to issue (a) i.e. taxability of the transfer of development right, we find that the impugned order of the ITAT records findings of Assessing Officer in detail from which it is evident



that the Assessing Officer applied his mind to the above claim and on the basis of the facts before him, came to the conclusion that an amount of Rs.5.86 Crores out of Rs. 41 Crores received could alone be subjected to the tax as income during the subject assessment year. The balance amount Rs.35.14 Crores has to be treated as deposit as the same is subject to being refunded in the absence of the environmental clearance. Thus, we find that the Assessing Officer has taken a view/formed an opinion on the facts before him and such a opinion cannot be said to be an erroneous as it does not proceed on the incorrect assumption of facts or law and the view taken is a possible view. Therefore, as held by the Apex Court in Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83/109 Taxman 66 where two views are possible and the Income Tax Officer has taken one view with which the Commissioner of the Income Tax does not agree, cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless



the view taken by the Income Tax Officer is itself unsustainable in law.

So far as issue (b) i.e. warranty expenses claimed by the respondent - assessee is concerned, we find that the ITAT has recorded the fact that a specific query with regard to the same was made by the Assessing Officer during the assessment proceedings. This query was responded to by the respondent - assessee justifying the warranty expenses. The Assessing Officer being satisfied with regard to the justification offered, allowed the claim of warranty expenses as made by the respondent - assessee. It is thus clear that the Assessing Officer had considered the issue by raising questions during the assessment proceedings. The mere fact that it does not fall for discussion in the assessment order would not ipso facto lead to the conclusion that the Assessing Officer did not apply his mind. It is clear that if the Assessing Officer is satisfied with the response of the assessee on the issue and drops the likely addition, it cannot be said to be non-application of mind to the issue arising before the

Assessing Officer. In fact this issue was a subject matter of the consideration by this Court in the CIT v. Fine Jewellery (India) Ltd. [2015] 55 taxmann.com 514/230 Taxman 641/372 ITR 303. In the above case, an identical submission made on behalf of the Revenue was negated in the context of exercising of power under Section 263 of the Act to hold that if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it has not been dealt with in the assessment order would not lead to a conclusion that the Assessing Officer has not applied his mind to the issues.

8. We thus find that on the issues (a) and (b) viz. consideration received on transfer of development right and warranty expenses are concerned, the impugned order of the ITAT has applied the principle of law laid down in Malabar Industrial Co. Ltd.'s case (supra) and Fine Jewellery (India) Ltd. (supra). Thus, the question as proposed does not give rise to any substantial question of law. Thus, the question as framed are not entertained."



11. In view of the above facts and circumstances of the case, the proposition of law laid down by Hon'ble Bombay High Court that once the issue has been examined by the AO in detail and one of the permissible view is taken by allowing the claim of expenditure of assessee, no revision is possible under section 263 of the Act. Hence, we quash the revision order passed by PCIT and allow the appeal of the assessee.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 04.02.2020

Sd/-

(श्री एम बालगणेश/ SRI M BALAGANESH)
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.02.2020

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai