

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री न्यायाधीश पी.पी. भट्ट, अध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI JUSTICE P.P.BHATT, PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं /I.T.A.Nos.890 & 891/Chny/2018
(निर्धारणवर्ष / Assessment Years: 2013-14 & 2014-15)

M/s.Green Pearl Electronics P.Ltd. 211/1, East Potheri Village Street, Kattankulathur, Kanchipuram-603 203.	Vs	The Assistant Commissioner of Income Tax, Corporate Circle-2(1), Chennai-34.
PAN: AANCS 0865M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.N.Arun Raj, C.A,
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

मुनवाईकीतारीख/Date of Virtual hearing	:	09.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	20.01.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against the common order of the learned CIT(A)-6, Chennai, dated 28.12.2017 and pertain to assessment years 2013-14 & 2014-15 . Since, the facts are identical and issues are common, for the sake of convenience, they were heard together and are disposed of by way of this consolidated order.

2. The assessee has more or less raised common grounds of appeal for all the assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2013-14 in

ITA No.890/Chny/2018 are reproduced as under:-

"1. The order of The Commissioner of Income Tax (Appeals) - 6, Chennai dated 28.12.2017 in I.T.A.Nos.343 & 566/CIT(A)-6/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the disallowance of expenses on the analysis of the book treatment and the treatment given for such expenses in the income tax computation without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the disallowance of expenses on the presumption of such expenses incurred at the pre-operative stage was wholly unjustified and ought to have appreciated that the sequence of events after selling up of the business in focusing different products and incurring expenses in relation thereto was completely overlooked and brushed aside, thereby vitiating the findings in para 4.3 of the impugned order.

4. The CIT (Appeals) failed to appreciate that the expenses incurred were wrongly considered as capital in nature which formed part of the another facet of the findings to sustaining the disallowance of such expenses and ought to have appreciated that the details furnished in this regard were not examined properly, thereby vitiating the findings in para 4.3 of the impugned order.

5 The CIT (Appeals) failed to appreciate that the distinction between the book entries/treatment and the income tax computation was completely brushed aside and ought to have appreciated that true financial statements for the Assessment Years under consideration and income tax computation were not given due credence at the conceptual level, thereby vitiating the findings in para 4.3 of the impugned order.

6 The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law."

3. Brief facts of the case are that assessee company is engaged in the business of manufacture of LED lights filed its return of income for assessment year 2013-14 on 28.09.2013 declaring loss of ₹ 1,75,37,588/-. During the financial year relevant to the assessment year 2013-14, the assessee has incurred certain expenses like consultancy charges, raw material purchases, salary etc. and the same has been treated as deferred revenue expenditure in the financial statements. However, in the statement of total income deduction has been claimed for total expenditure. During the course of assessment proceedings, the AO has called upon the assessee to explain as to why deduction claimed towards deferred revenue expenditure in the statement of income shall not be treated as capital expenditure and added back to work in progress because nature of expenditure incurred are in the nature of capital expenditure which gives enduring benefit to the assessee. In response, the assessee submitted that it is in the business of manufacture of LED lights for which till financial year 2009-10, it has purchased raw materials being LED drives, but from the financial year 2011-12, the assessee intended to manufacture raw materials on its own for which it has incurred certain expenses like technical

consultancy charges, purchase of raw materials, advertisement charges etc., which are purely in the nature of revenue expenses and hence, although the same has been treated as deferred revenue expenditure in the books of account, but deduction has been claimed for the purpose of income tax on total expenditure, since the same is in the nature of revenue expenditure and was incurred for the purpose of business. The Assessing Officer was not convinced with the explanation of the assessee and according to him, expenditure incurred for development of a new product including knowhow is in the nature of intangible asset, which gives enduring benefit to the assessee and hence, expenses incurred towards development of new product shall be regarded as capital work-in-progress and accordingly, disallowed deduction claimed towards pre-operative/preliminary expenses of ₹ 1,91,45,213/- and added back to the total income of the assessee.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A) . Before the learned CIT(A), the assessee has reiterated its arguments taken before the Assessing Officer .The assessee further submitted that expenditure incurred under the head technical consultancy charges, purchase of

raw materials and advertisement expenses etc. are in the nature of revenue expenditure, which is incurred for the purpose of existing business and hence, the same cannot be considered as capital in nature, merely because the assessee has treated expenditure under the head deferred revenue expenditure pending amortization over the years.

5. The learned CIT(A) after considering the relevant submissions of the assessee observed that on the basis of the details filed by the assessee, which clearly indicates that technical consultancy charges, electricity charges, purchase of raw materials and payments to certain individuals would certainly partake the character of capital in nature as project work initiated, insofar as manufacturing of LED drives / solar lights has not been completed during the previous year relevant to the assessment year . The learned CIT(A) further observed that on the basis of details furnished by the assessee, the Assessing Officer has come to the finding of fact that expenditure is capital in nature and hence, there is no error in the findings recorded by the Assessing Officer that the products intend to manufacture are not ready for sale during the impugned assessment year and consequently any expenditure

incurred for development of said products are definitely in the nature of capital expenditure which gives enduring benefit to the assessee, consequently cannot be allowed u/s.37(1) of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

6. The learned AR for the assessee submitted that the learned CIT(A) has erred in sustaining disallowance of expenses on the analysis of book treatment and the treatment given for such expenses in the income tax computation without appreciating the fact that expenses incurred are in the nature of revenue expenditure which does not give enduring benefit to the assessee. The learned AR further submitted that the learned CIT(A) has erred in holding that assessee has developed a new product which was not completed during the relevant financial year without considering the fact that assessee has already started manufacturing the products and generated revenue from sales and consequently, any expenditure incurred for development of said product, which are in the nature of revenue expenses needs to be allowed as deduction irrespective of the accounting treatment given by the assessee in the books of accounts. The learned AR for the assessee further submitted that the issue is squarely covered in favour of the

assessee by the decision of Hon'ble Delhi High Court in the case of CIT Vs. Denso India Ltd.(2009) 318 ITR 140, where on identical facts and circumstances, the Hon'ble High Court held that where assessee manufacturing auto electrical parts incurred expenditure for setting up separate cell for developing import substitute parts, the expenditure in question was allowable as revenue expenditure.

7. The learned DR, on the other hand, supporting the order of the learned CIT(A) submitted that as claimed by the assessee expenditure has been treated as deferred revenue expenditure in the books of account, which itself is sufficient to come to the conclusion that expenditure gives enduring benefit to the assessee and hence, the Assessing Officer as well as learned CIT(A) have recorded correct finding to disallow expenditure claimed in the statement of total income and hence, their orders should be upheld.

8. We have heard both parties, perused the materials available on record and gone through the orders of the authorities below along with the case laws cited by the learned counsel for the assessee. The assessee is engaged in the business of manufacturing LED lights was purchasing raw materials being LED drives till

assessment year 2010-11. The assessee started manufacturing these LED drives in substitute of purchase from the assessment year 2012-13 on the basis of Government policy for encouragement of manufacturing solar based lights in relation to the manufacture of the above mentioned LED drives and solar based lights. The assessee has incurred certain revenue expenditure namely technical consultancy charges, purchase of raw materials, advertisement expenses etc., which were treated as deferred revenue expenditure, pending amortization in the books of account under the head pre-operative expenses, but deduction has been claimed towards total expenditure incurred in the statement of total income for income-tax purposes on the ground that said expenditure is in the nature of revenue expenditure, which were incurred during the relevant financial years for the purpose of business. In the light of above facts, if you examined the claim of the assessee, the said claim needs to be examined independent of treatment given in the books of account. Although, the assessee has treated said expenditure as deferred revenue expenditure pending amortization over a period, but the nature of expenditure incurred by the assessee are such that they are purely in the nature

of revenue expenditure incurred wholly and exclusively for the purpose of business of the assessee. Once the expenditure incurred are in the nature of revenue expenditure, which does not give enduring benefit or brought any new asset, then merely for the reason that the assessee has given different treatment in the books of account for the said expenditure, the same cannot be considered as capital in nature which gives enduring benefit to the assessee. It is well settled principle of law that entries in books of account is not detrimental to claim of deduction towards any expenditure, if such expenditure is deductible in accordance with income tax laws. In this case, the Assessing Officer having not disputed the nature of expenditure incurred being revenue has erred in himself in disallowing claim of deduction solely on the basis of treatment given in the books of account, even though entries in books of account are not relevant criteria to decide nature of expenditure and its deductibility for the purpose of taxation. The said finding is fortified by the judgement of Hon'ble Delhi High Court in the case of CIT Vs. Denso India Ltd. (supra), where under identical set of facts the Hon'ble High Court held that where assessee manufacturing auto electrical parts incurred expenses for setting up separate cell for

developing import substitute parts, the expenditure in question was allowable as revenue expenditure. The Hon'ble High Court while allowing the claim has laid down certain parameters and according to the observations of the Hon'ble High Court it is nature of expenditure that is relevant, but not treatment of the expenditure in the books of account / financial statements for determining whether or not the expenditure is of capital or revenue. The relevant findings of the Hon'ble High Court are as under:-

“3. Before the Commissioner of Income-tax (Appeals) the assessee-company contended that despite the treatment given in the backs of account by the assessee-company as deferred revenue expenditure, the fact remains that the said expenditure was of revenue nature- The Commissioner of Income- tax (Appeals) accepted the stand of the assessee-company. inter alia, for the following reasons

“(I) Prima facie. the expenditure was of revenue nature.

(ii) No capital asset was acquired or brought into existence by incurring the expenditure.

(iii) Expenditure incurred for the purpose of running a business efficiently cannot for that reason be labelled as capital expenditure.

(iv) The treatment of the expenditure in the books account/financial statements is not relevant for determining whether or not the expenditure is of capital or revenue nature

(v) Heavy revenue expenditure incurred in one year cannot have the effect of converting it into capital expenditure. For example, expenditure incurred on advertisement.

(vi) The Assessing Officer did not dispute the fact that the expenditure was incurred or question the quantum. His main problem

was that the company had, in its financial statement, chosen to treat the expenditure as deferred revenue expenditure.

(vii) The Income-tax Act, 1961, does not cater for deferred revenue expenditure no matter what the principles of accountancy prescribe.

(vii,) Even, according to the appellant, the expenditure was treated as deferred revenue expenditure- In other words, irrespective of how the appellant chose to write off the expenditure, it still remained revenue expenditure.”

4. In appeal the Income—tax Appellate Tribunal had opined that though the treatment given by the assessee— company considering the long-term benefits of the said expenditure as deferred revenue expenditure, such treatment alone was not sufficient to conclude that the said expenditure was of capital nature, The Income- tax Appellate Tribunal accordingly held that the said expenditure was clearly of a revenue nature having regard to its very nature as well as purpose for the same was being incurred, viz, being to substitute the components of raw material and as such, the advantage accrued to the assessee is only in the revenue field and not in the capital field.

5. Before us it is not disputed by the appellant that the expenditure incurred towards salaries, wages, travelling expenses, etc -, are revenue in nature, however, the counsel for the appellant has contended that since there was enduring benefit from the expenditure. be said expenditure is capital in nature. Reliance was placed upon Assam Bengal Cement v- CIT[1955]27 ITR 34 (sc) on the meaning of capital expenditure and on Taparia Toots Ltd v. Joint CIT [2003] 260 ITR 102 (Bom) and CIT v. Kanyakumari Dist.Co-op.Spg.Mills Ltd.(2003) 264 ITR 684 for the same purpose.

6. The counsel for the respondent-assessee has however placed reliance upon Madras Industrial Investment Corporation Ltd v. CIT (1997) 225 ITR 802 (sc), C'T v. Printpack Machinery 248 ITR 684 (Delhi), Empire Jute Company v. CIT 124 itr 1 (SC) CIT vs .J,JK,Synthetics Ltd. 309 ITR 371 (Delhi) and CIT vs Usha Iron Ferro Metal Corporation Ltd 296 ITR 140 (Del) to contend that the expenditure is of revenue nature only- The counsel for the respondent has further contended that the concurrent findings of facts of the Commissioner (Appeals) and the Income-tax Appellate

Tribunal should not be disturbed by the court as no substantial question or law arises.

7. A reference to the judgments cited by the respondents show that expenses such as salaries. etc., incurred by the assessee in this case is clearly revenue in nature. The judgments cited by the counsel do not applies none of them dealt with facts as found in the present case. i.e., of expenditure for salaries, wages. Travelling expenses. etc. Merely because the benefit of the type of expenditure involved in this case is such the benefit can also be available later is not a good enough reason to treat the expenditure, which is otherwise of revenue nature, as a capital expenditure. There are concurrent findings of both the authorities below with which we agree and which are not perverse, No substantial question of law arises. Dismissed.”

9. In this case, the facts are identical to the facts considered by the Hon'ble Delhi High Court in the case of CIT Vs Denso India Ltd (supra), where the assessee is engaged in the business of manufacturing LED lights, was purchasing certain raw materials till assessment year 2010-11, but from the assessment year 2013-14, it started manufacturing substitute of purchases for which certain expenditure have been incurred for development of the product which are purely revenue in nature. Although, the assessee has considered said expenditure as deferred revenue expenditure, pending amortization in the financial statement, but because of nature of expenditure the same has been claimed as deduction u/s.37(1) in the statement of total income. We, therefore,

considering the facts and circumstances of the case and by following the decision of Hon'ble Delhi High Court in the case of CIT Vs.Denso India Ltd. (supra) are of the considered view that expenditure incurred by the assessee being technical consultancy charges, purchase of raw materials, advertisement charges and electricity charges are in the nature of revenue expenditure, which does not give any enduring benefit to the assessee and hence, same cannot be treated as capital expenditure. Hence we, direct the Assessing Officer to allow deduction towards expenditure as claimed by the assessee in the statement of total income.

10. In the result, the appeal filed by the assessee is allowed.

ITA No. 891/Chny /2018 (A.Y.2014-15):-

11. The facts and issues involved in ITA No. 891/Chny/2018 are identical to the facts and issues which we have already considered in ITA No.890/Chny/2018 for the assessment year 2013-14. The reasons given by us in the preceding paragraphs of ITA No.890/Chny/2018 shall *mutatis mutandis* apply to this appeal as well. Therefore, for the similar reasons, we, direct the Assessing

Officer to allow deduction towards expenditure as claimed by the assessee in the statement of total income.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 20th January, 2021

Sd/-
(न्यायाधीश पी.पी. भट्ट)
(Justice P.P.Bhatt)
अध्यक्ष / President

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 20th January, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.