

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-2" : DELHI  
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.8674/Del./2019  
Assessment Year 2015-2016

Shri Sunil Saigal, B-10, Geetanjali Enclave, New Delhi - 110 017 PAN ALPPS5156B	vs.	The Income Tax Officer, Ward - 31(1), Room No.1308, Civic Centre, Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Sanjay Sood, C.A.
For Revenue :	Shri Vijay Kumar Kataria, SR DR

Date of Hearing :	27.07.2021
Date of Pronouncement :	16.09.2021

**ORDER**

This appeal filed by the Assessee is directed against the order dated 30.08.2019 of the Ld. CIT(A), New Delhi, relating to the A.Y. 2015-2016.

2. Facts of the case, in brief, are that the assessee is an individual and the proprietor of Consolidated Products Corporation which is involved in trading and sale/purchase of medical equipments, devices etc. He filed his return of income on 28.10.2015 declaring total income of

Rs.10,45,000/-. During the course of assessment proceedings, the A.O. noted from the computation of income that assessee has claimed marketing expenses of Rs.35 lakhs being deferred revenue expenditure incurred by the assessee during the year under consideration. He observed from the P & L A/c that assessee has shown Marketing Expenses of Rs.35 lakhs under the Head "Advances" on the asset side of the Balance Sheet and not claimed any marketing expenses in the P & L A/c. Further in the Significant Accounting Policies and Notes to Accounts the Auditor has given Note regarding marketing expenses as under :

*"Marketing Expenditure represents foreign travelling, Business Promotion, Printing & Stationery, Exhibition & Conference etc. incurred on development of agencies which will be written off over a period of five years beginning from the year next following in which it is incurred."*

2.1. Since, from the Notes to Accounts, Balance Sheet and Profit & Loss A/c it is clear that the marketing expenses

will be written-off from the year next following in which it is incurred and the assessee has claimed the same in the current year, the A.O. specifically asked the assessee to explain as to why the marketing expenses of Rs.35 lakhs claimed in the year under consideration should not be disallowed and carried forward loss of Rs.30,21,816/- caused due to claim of marketing expenses may not be disallowed.

2.2. The assessee in response to the same, replied as under :

*"The marketing expenses it is reiterated includes expenditure on travel, business promotion, conferences. These expenditure are run on day to day functioning of the organization and are only revenue in nature.*

*We have also placed on record copies of returns of income for A. Y. 2016-17 and 2017-18. In these returns it may be observed though 1/5<sup>th</sup> of Rs.35 lakhs i.e., Rs.7 lakhs had been charged in Profit &*

*Loss Account, in each of these years, but the same has been added back in computation of income.*

*No deduction claimed by assessee. “*

2.3. However, the A.O. was not satisfied with the arguments advanced by the assessee and made addition of the same to the total income of the assessee by observing as under :

“3.3. *Reply of the assessee is considered but not found tenable because the assessee himself In the note to accounting stated that the marketing expenses will be written off from year next following in which it is incurred and accordingly not claimed the same in Profit & Loss A/c and carried forward the same in Balance Sheet under the head Advance for written off in future years.*

3.4. *The statement of the assessee, that in the returns of income for AM. 2016-17 and 2017-18, 1/5<sup>th</sup> of marketing expenses of Rs.35 lacs had been charged in Profit & Loss a/c in each of these*

*years, but the same has been added back in computation of income, is also afterthought of the assessee and having no relevance. Without prejudice to this in both years, i.e. in A.Y.2016-17 & 2017-18 huge losses are suffered by the assessee. At the time of filing of ITR for A.Y.2015-16 which was filed by the assessee on 28/10/2015, assessee was aware that he is going to suffer huge loss in F.Y.2015-16 relevant to A.Y.2016-17, due to that the assessee has changed the view' and claimed the whole marketing expenses in the year under consideration.*

3.5. *Since, the marketing expenses as claimed by the assessee himself, are to be written from next year and to protect the interest of revenue, the whole marketing expenses i.e. Rs.35 lacs, claimed entirely by the assessee in the year under consideration are hereby disallowed and added back to the income declared by the assessee for*

*the year under consideration. I am satisfied that the assessee has willfully and deliberately furnished inaccurate particulars of his income and thereby concealed income of Rs.35 lacs on a/c of marketing expenses and is therefore, liable for penalty proceedings under Section 271(l)(c) of the Income Tax Act, 1961.”*

2.4. Similarly, the A.O. made addition of Rs.2460/- being interest payment of income tax demand and Rs.88,979/- being 10% of adhoc addition on account of the following expenses :

1.	<i>Vehicle running &amp; Maintenance expenses.</i>	<i>Rs.2,93,718/-</i>
2.	<i>Depreciation on car</i>	<i>Rs.2,33,057/-</i>
3.	<i>Telephone &amp; Interest expenses</i>	<i>Rs.3,63,010/-</i>
	<i>Total</i>	<i>Rs.8,89,785/-</i>

2.5. Thus, the A.O. determined the total income of the assessee at Rs.46,36,440/-.

2.6. In appeal, the Ld. CIT(A) sustained the addition of Rs.35 lakhs made by the A.O. by observing as under :

*“5.2.2. I have carefully considered the observations of AO and submissions of appellant. From perusal of the facts of the case, it is apparent that appellant has amortized the expenditure of Rs.35,00,000/-. However, no new asset has come into existence. Further, during the course of remand proceedings, AO has submitted that the marketing expenses mainly included expenditure made on brochures, conference bags, stationery etc. and assessee has added back Rs.7,00,000/- in the computation of income for both A.Y. 2016-17 & 2017-18. From perusal of the ledger of Deferred Revenue Expense, it is seen that the entire expenditure is on account of Printing and Stationery Expenses - Rs.8,47,471/-, Exhibition and Conference Expenses of Rs.14,43,412/-, tour & travelling foreign expenses of Rs.5,92,080/- and Business Promotion Expenses of Rs.6,17,037/-. The expenditure has been incurred for 3<sup>rd</sup> Asian EMS Conference. It is apparent that the*

*expenditure which has been deferred are basically revenue expenditure which have been incurred by appellant as a sponsor of the event. It is clear that there is in fact no direct nexus with appellant's business. Therefore, appellant's claim is not justified in the facts of the case. It is to be noted that the provisions of Income Tax Act provide for specific conditions when the expenditure is to be deferred eg. either in the nature of certain preliminary expenses. On careful perusal of appellant's case, it is seen that appellant has not given any basis as to why expenditure has been deferred- neither the nature and type of expenditure justifies appellant's claim. It is also to be noted that it is not the accounting practice of appellant to defer the expenditure. Therefore, I find no basis to interfere in the order of AO. Accordingly, ground no. 1 is dismissed."*

2.7. Similarly the Ld. CIT(A) restricted the disallowance of Rs.88,979/- to Rs.44,490/-.

3. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

- “1. *THAT in the facts and circumstances of the case, the CIT(A) erred in making addition on account of marketing expenses of Rs.35,00,000/-.*
2. *THAT in the facts and circumstances of the case, the CIT(A) erred in confirming the ad hoc disallowance, on account of vehicle running & maintenance expenses claimed to the extent of Rs.14,686.*
3. *THAT in the facts and circumstances of the case, the CIT(A) erred in confirming the ad hoc disallowance, on account of Depreciation on car claimed to the extent of Rs.11,653/-.*
4. *THAT in the facts and circumstances of the case, the CIT(A) erred in confirming the ad hoc disallowance, on account of Telephone and interest expenses claimed to the extent of Rs.18,150/-.*

5. *THAT the appellant craves leave to add, alter, amend or drop any of the above grounds at the time of the hearing.”*

3.1. The Learned Counsel for the Assessee strongly challenged the Order of the Ld. CIT(A) in sustaining the marketing expenses of Rs.35 lakhs. He submitted that the assessee had incurred day-to-day expenditure of exhibition and conference, printing and stationery, business promotion tour and travel (Foreign). In view of the working balance-sheet leading to difficulties in dealing with Banks, Financial Institutions etc., the assessee had capitalised some of such expenditure in the balance sheet under the Head “Marketing Expenses” at Rs.35 lakhs. However, in the computation of income this entire amount of Rs.35 lakhs is claimed as revenue expenditure.

3.2. Referring to decision of Ahmedabad Special Bench of the Tribunal in the case of ACIT vs., Ashima Syntex Ltd., [2009] 117 ITD 1 (AHD) (SB), he submitted that the Tribunal has allowed such type of expenditure as revenue in nature. Referring to the decision of Hon’ble Delhi

High Court in the case of CIT vs., Citi Financial Consumer Fin. Ltd., [2012] 20 taxmann.com 452 (Del.) he submitted that the Hon'ble Delhi High Court has held that expenditure on publicity and advertisement is to be treated as revenue expenditure in nature allowable fully in the year in which it is incurred. Referring to the decision of the Coordinate Bench of the Tribunal in the case of DCIT, Circle-12(1), New Delhi vs., Hitz FM Radio India Ltd., [2017] 82 taxmann.com 327 (Delhi-Trib.) he submitted that the Tribunal in the said decision has held that there is no Law under the Act to say that revenue expenditure is deferred revenue expenditure. Therefore, when the A.O. had himself admitted that the expenditure in question was a revenue expenditure, he should have allowed the entire claim of assessee in assessment year in question itself. He accordingly submitted that the addition of Rs.35 lakhs made by the A.O. and sustained by the Ld. CIT(A) should be deleted.

4. So far as the disallowance of vehicle running and maintenance expenses, depreciation on motor car and disallowance on account of telephone expenses and interest

expenses are concerned, he submitted that the same are on the higher side and the addition sustained by the Ld. CIT(A) should be deleted.

5. On the other hand, the Ld. D.R. relied on the Order of the A.O. and the Ld. CIT(A).

6. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. The first issue to be decided in the grounds of appeal as per Ground of Appeal Number.1 is allowability of marketing expenses of Rs.35 lakhs as revenue expenditure.

6.1. As mentioned earlier, marketing expenditure in the instant case includes expenditure on travel, business promotion, conferences etc., and the genuineness of the expenditure is not in dispute. The assessee in the instant case has shown the entire marketing expenses of Rs.35 lakhs in the balance sheet under the Head “Advances”, but, claimed the same in the computation of income as revenue

expenditure which was disallowed by the A.O. I find the Ld. CIT(A) also sustained the addition made by the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that such expenses although shown as deferred revenue expenditure has to be allowed as revenue expenditure. I find some force in the above submissions of the Learned Counsel for the Assessee. Identical issue had come-up before the Ahmedabad Special Bench of the Tribunal in the case of ACIT vs., Ashima Syntex Ltd., (supra), wherein the nature of expenditure amortized was also of similar nature i.e., advertisement, conferences, exhibition etc., The Tribunal after examining the Law on the subject, had allowed the entire expenditure in the year in which it was incurred though in the books of account it was amortized over few years.

6.2. I find the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs., Citi Financial Consumer Fin. Ltd., (supra), has also dealt with an identical issue and has held that the expenditure on publicity and

advertisement is to be treated as revenue expenditure in nature allowable fully in the year in which it is incurred. It has been held in the said decision that in the income tax Law there is no concept of deferred revenue expenditure. Once the assessee claimed the deduction for the whole amount of such expenditure even in the year in which it is incurred and the expenditure fulfils the test laid down under section 37, it has to be allowed. The relevant observation of the Hon'ble Delhi High Court reads as under:

*“Held, that there was no dispute that the expenditure was in fact incurred. It was also not in dispute that the expenditure was business expenditure incurred wholly for the purpose of the business of the assessee. The expenditure incurred in the nature of advertisement and publicity was incurred forever and in no manner any portion thereof reverts back to the assessee thereby fulfilling the ingredients of section 37. The expenditure on publicity and advertisement was to be treated as revenue in nature allowable fully in*

*the year in which it was incurred. There was no advantage which had accrued to the assessee in the capital field. The expenditure was incurred to facilitate the assessee's trading operations. No fixed capital was created by this expenditure. Once the asses claims the deduction for the whole amount of such expenditure, even in the year in which it was incurred, and the expenditure fulfils the test laid d under section 37 of the Act, it had to be allowed.”*

6.3. Similar view has been taken by the Coordinate Bench of the Tribunal in the case of DCIT, Circle-12(1), New Delhi vs., Hitz FM Radio India Ltd., (supra) wherein it has been held that there is no Law under the Act to say that revenue expenditure is deferred revenue expenditure. It has been held that when A.O. had himself admitted that expenditure in question was a revenue expenditure, he should have allowed the entire claim of assessee in assessment year in question itself. In this view of the matter, I hold that the Ld. CIT(A) was not justified in

disallowing the marketing expenses of Rs.35 lakhs as revenue expenditure in the year under consideration. Therefore, the Grounds of Appeal Number.1 of the assessee is allowed.

7. So far as the adhoc disallowance on account of vehicle running and maintenance expenses, depreciation on motorcar and adhoc disallowance on account of telephone and interest expenses are concerned, I find out of the total amount of Rs.8,89,785/-, the A.O. disallowed 10% of the same at Rs.88,979/- which the Ld. CIT(A) has restricted to Rs.44,489/-. It is the submission of the Learned Counsel for the Assessee that disallowance of such item of 5% of the expenses is on the higher side. Considering the totality of the facts and circumstances of the case and in the interest of justice, I am of the considered opinion that disallowance of Rs.25,000/- *lump sum* on estimate basis out of these expenses will meet the ends of justice. I hold and direct accordingly. The Grounds of Appeal Numbers 2, 3 and 4 raised by the assessee are accordingly partly allowed.

8. Ground Number 5 being general in nature is dismissed.

9. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 16.09.2021.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Delhi, Dated 16<sup>th</sup> September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.