

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "C": NEW DELHI ]**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. No. 2605/Del/2017  
(Assessment Year: 2012-13)

Addl. CIT, Special Range : 5, New Delhi.	Vs.	M/s. Jasper Infotech Pvt. Ltd., 246, 1 <sup>st</sup> Floor, Okhla Phase-III, Okhla Indl. Area, New Delhi-110 020. <b>PAN: AABCJ8820B</b>
(Appellant)		(Respondent)

Assessee by :	None;
Department by :	Ms. Sarita Singh [CIT] – D. R.;
Date of Hearing :	07/10/2021
Date of pronouncement :	10/11/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by the Addl. Commissioner of Income Tax, Special Range-5, New Delhi, against the order passed by the CIT (Appeals)-5, New Delhi, dated 14.02.2017 for assessment year 2012-13, raising the following grounds of appeal:-

“1. Ld. CIT (A) has erred in law and on facts in allowing relief on account of disallowance of expenses on advertisement, publicity and business promotion incurred on brand building of E-commerce portal "Snapdeal" considering the same as revenue expenditure whereas the same is capital expenditure for brand building on ecommerce portal "Snapdeal".

2. Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.29,45,50,223/- being 50% of Rs.58,91,00,447/- on account of disallowance of expenses on advertisement, publicity and business promotion incurred on brand building of E-commerce portal "Snapdeal" without appreciating the fact that the assessee is not directly engaged in trading of goods on Snapdeal e-portal and only facilitates the vendors and customers to trade on e-portal on percentage service fee only.

3. Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.29,45,50,223/- on account of disallowance of expenses on advertisement, publicity and business promotion without appreciating the fact that such expenses have been incurred solely on brand building of "Snapdeal" having enduring benefits for E-commerce business of the assessee company as the E-commerce business model is totally different from normal business model of trading / manufacturing concerns, having fast changing strategies and competition with ever growing e-commerce portals and surviving only with strong brand. “

2. Brief facts of the case shows that assessee is a company engaged in the business of marketing services under the brand name of 'Snapdeal' in India. It filed its return of income declaring a loss of Rs.72,78,21,169/- on 28.09.2012. This return was picked up for the scrutiny.
3. During the course of assessment proceedings the Assessing Officer noted that assessee has claimed an expenditure of Rs. 58,91,00,447/- on account of advertisement, publicity and business promotion. Assessee claimed it as revenue expenditure. The ld. Assessing Officer was of the view that same are not s revenue expenditure, but are incurred for acquisition of intangible assets being capital expenditure as those are incurred in the formative years of the business of the assessee and such expenditure have enduring benefit. The Assessing Officer held that it is the efforts of the assessee which has built a marketing net-work in India and it indicates the kind of efforts involved in creating marketing intangibles without which assessee company would not have been a market competitor in that segment. He held that by incurring this expenditure assessee is substantially benefited in creating 'Snapdeal' brand and, thus, these expenditure has given enduring benefit to the assessee. Accordingly, he treated 50% of the above expenditure as capital expenditure and disallowed a sum of Rs. 29,45,50,223/-. The assessment order under Section 143(3) of the Income Tax Act, 1961 (the Act) was passed on 27.03.2015 determining total loss of the assessee Rs. 42,22,74,270/-.
4. Assessee aggrieved with that order preferred an appeal before the ld. CIT (Appeals). The ld. CIT (Appeals) relying upon the several judicial precedents held that the incurring of advertisement, publicity and sales promotion expenditure is wholly necessitated for business purpose, though enduring in the long term cannot be held to be of capital expenditure. Therefore, he deleted the above addition. The ld. Assessing Officer is aggrieved with that.

5. The Id. [CIT] – DR vehemently supported the order of the Assessing Officer.
6. Despite notice, none appeared on behalf of the assessee and, therefore, the issue is decided on the merits of the case.
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that the assessee is a web-based platform of ‘Snapdeal’, which treats together vendors and customers for on-line purchase of goods. The assessee has incurred expenditure on advertisement, sales promotion and publicity claiming it to be a revenue expenditure whereas the Id. Assessing Officer held that 50% of such expenditure are capital expenditure as it has helped the assessee in maintaining and creating ‘Snapdeal’ brand.
8. On appeal before the Id. CIT (Appeals) he held that the above expenditure cannot be said to be a capital expenditure. He decided the whole issue in para Nos. 3.4.3 to 3.4.7 as under:-

“3.4.3 I have perused the nature of expense claimed vis-a-vis the business model of the appellant. The appellant functions in the e-commerce space which is a new- online platform, breaking away from the brick and mortar model of business of sale of goods. The web based platform of Snapdeal brings together the vendors (in electronics, apparent, personal care and various other categories) and customer who prefer to purchase products at the convenience of their homes. The appellant is not a trader and the way the system works is that a service fee is charged from the sellers of the merchandise at an agreed percentage. Since this a completely revolutionary model vis-a-vis the earlier business models of merchandising, a very high degree of visibility is required in order to attract more and more customers to this platform. During the year the appellant has incurred Rs. 53.51 crores by way of advertisement and publicity, the major chunk (Rs. 30.99 crores) of which represents advertisement on social media websites namely Google, Facebook, Ebay, Yahoo etc Another Rs. 8.96 crores represents payment to T.V channels and . ad agencies for promotion. The website run by the appellant is in tough competition with other players in the field namely Flipkart, Amazon India etc. (these two companies along with the appellant are estimated to control 80% of the market) and many other players in limited fields of merchandising such as Big Basket, Grofers, etc. (in the area of groceries), Myntra, Jabong, Limeroad, Koovs, 99labels etc. (clothing and accessories), lmg, Netmeds, Medplusmart etc (medicines). Hence, it is entirely necessary on the part of the appellant company to incur expenditure on promoting the business model and even the brands to be able to not only retain customers but also to attract more customers and expand its outreach. It is understood that the appellant has also hired Sh. Aamir Khan as its brand ambassador in the year 2015. In the past, Aamir Khan has been associated with brands like Coca Cola, Samsung, Godrej, Tata Sky and Titan watches.

3.4.4 Having discussed the nature of expenses, it is also necessary to now examine whether these expenses could be said to provide an enduring benefit to the appellant or whether these expenses create an intangible asset. The concept of enduring benefit was explained many years ago by Hon'ble Supreme Court in Empire Jute Co. Ltd. (125 ITR 1). The court held that expenditure even if incurred for obtaining a benefit for an indefinite future may still be on revenue account and the test of enduring benefit may not work in all situations. According to the Supreme Court, what is material to consider in such situation, is the nature of the advantage in the commercial sense and if the advantage in the capital field, the same would be disallowable. If, however, the capital remains untouched and the expense only enables carrying out the business operations more efficiently and profitably, then despite the fact that there would be an advantage spread out over several years, the expenses would be revenue in nature. When the above test is applied in the appellant's case, it can be seen that heavy promotional advertising expenses are required to be made, and indeed have been made, with a view to facilitate the business operations and also to expand the same. It is no one's case that an online platform does not demand a very high degree of visibility, (almost to the point of harassing a customer!) so that he or she is induced to enter the area of online shopping. The business model also demands that customers be induced to shop online through inducements offered by way of free merchandise, cash discounts, freebies etc. In the fast emerging but competitive market such as the appellant's, it is also true that advertising expenses have no enduring nature/value.

3.4.5 The jurisdictional Delhi High Court has taken a view in many decisions that advertisement, publicity and business promotion expenditure should normally be treated as revenue expenditure unless there are special circumstances to hold that said expenditure was capital in nature. The gist of these decisions are discussed as under:

(i) Citi Financial Consumer Finance Ltd. (335 ITR 29) (in this case SLP filed by the department also stands dismissed)

*"14. Applying the aforesaid principle to the facts of this case, it clearly emerges that the expenditure on publicity and advertisement is to be treated as revenue in nature allowable fully in the year in which it was incurred. Concededly, there is no advantage which has 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. We may also add here that in the income-tax law, there is no concept of deferred revenue expenditure. Once the assessee claims 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 of the Act it has to be allowed. Only in exceptional cases, the nature mentioned in Madras Industrial Investment Corporation Ltd. [1997] 225 ITR 802 (SC), the expenditure can be allowed to be spread over, that too, when the assessee chooses to do so."*

(ii) Casio India Ltd. (335 ITR 196)

*"4. Challenging this order, the instant appeal is preferred by the Revenue under section 260A of the Act. Having regard to the facts narrated above, we are of the opinion that no question of law arises in this case. According to the Revenue, the expenditure on account of advertisement and sales promotion is*

*capital and not revenue in nature. Such an expenditure on account of advertisement and sales promotion is held by this court to be revenue in nature by answering this question in a batch of appeals with the lead case being I. T. A. No. 1820 of 2010 entitled CIT v. Citi Financial Consumer Fin. Ltd. [2011] 335 ITR 29 (Delhi) (decided on March 30, 2011). It was held that the expenditure on advertisement and sales promotion is to be treated as business expenditure allowable under section 37 of the Act. "*

(iii) Spice Distribution Ltd. (374 ITR 30)

"4. The Tribunal has rightly noticed and referred to the decision of the Delhi High Court in CIT v. PepsiCo India Cold Drink Ltd. [2012] 207 Taxman 5/21 taxmann.com 165 wherein, the judgment of the Supreme Court in Madras Industrial Investment Corpn. v. CIT [1997] 225 ITR 802/91 Taxman 340 (SC) was examined and it was observed that the assessee is entitled to claim deferred revenue expenditure but the Assessing Officer cannot treat the revenue expenditure as deferred revenue expenditure. The reason is that the Act itself does not have any concept of deferred revenue expenditure. Even otherwise, there are a number of decisions that the advertisement expenditure normally is and should be treated as revenue in nature because advertisements do not have long lasting effect and once the advertisements stop, the effect thereof on the general public and customer diminishes and vanished soon thereafter. Advertisements do not leave a long lasting and permanent effect in the sense that the product or service has to be repeatedly advertised. Even otherwise advertisement expense is a day to day expense incurred for running the business and improving sales. It is noticeable that every year, the respondent-assessee has been incurring substantial expenditure on advertisements. The Assessing Officer, in the assessment order, had referred to the fact that similar additions were also made in the Assessment Year 2008-09. Keeping in view the nature and character of the respondent- assessee's business, every year expenditure has to be incurred to make and keep public informed, aware and remain in limelight. This requires continuous and repeated publicity and advertisements to remain in public eye, to do business by attracting customers. It is an expenditure of trading nature. The aforesaid aspect has been highlighted by the Delhi High Court in CIT v. Salora International Ltd. [2009] 308 ITR 199 (Delhi) and CIT v. Casio India Ltd. [2011] 355 ITR 196/[2012] 20 taxmann.com 449 (Delhi)."

(iv) SBI Cards and Payment Services (P) Ltd. (229 Taxman 356)

"13. The Delhi High Court has repeatedly held that advertisement expenditures in the present day context should normally be treated as revenue expenditure, unless there are special circumstances and reasons to hold that the expenditure was capital in nature. The reason is that the advertisements do not have a lasting and long term effect and the memory of the customers or targeted audience is short lived. The advertisements fade away and do not have an enduring impact. If there is a lack of advertisement by one, the vacuum and space is taken over by others with benefit and advantage to the detriment of the first. Reference can be made to CIT *i/*. Salora International Ltd. [2009] 308 ITR 199 (Delhi) and the subsequent decision in ITA No.597/2014 titled CIT v. Spice Distribution Ltd. decided on 19th September, 2014."

3.4.6 As discussed in para 3.4.4 it may also be noted that the presumption drawn by the AO regarding the building of a brand image has also not been

approved by the courts, which have held that in a competitive environment, it would be difficult to assess the period of benefit derived from such advertisement and to ascertain whether any 'brand name' was created. I may in this regard cite the decisions of the Punjab and Haryana High Court in the case of Liberty group marketing division (315 ITR 125), the Bombay High Court in the case of Geoffrey Manner and Co, Ltd. (315--ITR 13d), the ITAT-Mumbai decision in the—case of Kaya Ltd. (ITA no. 3175/Mum/2013), Asian Paints Ltd. vs. Addl. CIT (ITA 78Q1/MUM/2010), Fine Jewellery (I) Ltd. (19 ITR 746), Warner Lambert India Ltd. (ITA 954 & 3063/Mu m/2006), Delhi ITAT decisions in Spice Communications Ltd. (35 SOT 78) and CIT v. Modi Revlon Pvt. Ltd. (78 DTR 342). The judgment of Delhi High Court in CIT v. Adidas India Marketing (P.) Ltd. [2010] 195 Taxman 256 (Delhi) recognized that brand promotion exercises undertaken through media campaigns, Schemes, programmes etc are essential for propagation of the brand. The necessity (or lack of it) is not something which income tax authorities can go into; as long as it is voluntarily undertaken by the business enterprise for profit earning, it would be entitled to claim relief under section 37(1). Similar view has been taken by the Jurisdictional High Court in the case of Modi Revlon Pvt.ltd. (210 Taxman 161) wherein similar disallowance @50% of advertising expenses had been made by the AO. The Court held that so long as the expenditure was inextricably linked to business purposes, and the AO has not denied the same, the expenditure was in the revenue field. The relevant portion of the High Court order is extracted as under:

*"23. In the present case, the AO was conscious of the fact that brand promotion expenses are a necessary ingredient in marketing strategies. Therefore, he allowed about 50 per cent of those expenses. However, the reasoning for disallowance of the rest, i.e. that the assessee could claim only a proportion of such expenses, since advertising expenses 'were to be borne by the sister concern dealer, and that the proportion was in respect of its territory, was not upheld. This Court does not see any fallacy in the Tribunal's approach or reasoning, on this aspect. One is not unmindful of the concerns of a business which engages in sale of consumer items, and faces continuous competition. Brand promotion enhances the visibility of given products or services, and are often perceived as conferring a competitive advantage on those who adopt those strategies or schemes. Expenditure towards that end is based on pure commercial expediency, which the revenue in this case, ought to have recognised, and allowed. The revenue's arguments on this point too are insubstantial."*

3.4.7 Keeping in view the facts of the case and the judicial precedents narrated above, the conclusion is that the benefit resulting from the advertisement, publicity and sales promotion is wholly necessitated for business purposes and its advantage, though enduring in the long term, cannot be termed as being in the capital field. The disallowance made by the AO is thus directed to be deleted. Ground no. 2 is allowed. “

9. We also find that the Id. CIT (Appeals) considered in allowing the claim of the assessee on 4 decisions of the Hon'ble High Courts. Further the Id. CIT (Appeals) followed the decision of the Hon'ble jurisdictional High Court in the case of Modi Revlon Pvt. Ltd. 210 Taxman 161 [2012] 26 taxmann.com 133 (Delhi). There was nothing in the Income-tax Act; nor was there any material on record suggestive of

the fact that the assessee could not claim these expenses as revenue expenditure. The fact remained that as assessee is operating in online marketing business as aggregator which is a highly competent consumer market the assessee had to stay ahead of its competition and thus engage itself in brand promotional activities and has necessarily to incur these expenses. The Id AO Having accepted the fact that the assessee could spend amounts for these activities to the extent of 50 % as revenue expenditure the Id AO could not have held that 50 % of such expenses are capital in nature, in absence of any contrary evidence. In view of this, we do not find any infirmity in the order of the Id. CIT (Appeals) in deleting the above disallowance. Further before us no evidence was placed on record to show that assessee has created any intangible asset and even after the details of expenses are placed before the Id. Assessing Officer, he held that ad-hoc percentage of certain expenditure are capital expenditure without pointing out that which nature of expenditure has resulted into creating an intangible asset. Accordingly, we find that the expenditure incurred by the assessee are purely revenue in nature and cannot be considered as capital expenditure. The Id. Assessing Officer also did not bring on record any evidence to prove his findings. In view of this, all the grounds raised in appeal by the Id. Assessing Officer are dismissed.

Order pronounced in the open court on : 10/11/2021.

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated : 10/11/2021

\*MEHTA\*

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	10.11.2021
Date on which the typed draft is placed before the dictating member	10.11.2021
Date on which the typed draft is placed before the other member	10.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	10.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	10.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	10.11.2021
Date on which the final order is uploaded on the website of ITAT	10.11.2021
date on which the file goes to the Bench Clerk	10.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	