

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. A. D. Jain, Vice-President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2137/Del/2016 : Asstt. Year : 2010-11**

**ITA No. 2138/Del/2016 : Asstt. Year : 2011-12**

M/s Ireo Waterfront Pvt. Ltd., 5, Dhanraj Chambers, 1 <sup>st</sup> Floor, Satbari, New Delhi	Vs	ACIT, Central Circle-26, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AACCV2433R</b>		

**Assessee by : Sh. S. Krishnan, Adv.**

**Revenue by : Ms. Meenakshi J. Goswami, CIT DR**

**Date of Hearing: 28.10.2021**

**Date of Pronouncement: 28.01.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-29, New Delhi dated 12.02.2016.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 2137/Del/2016, following grounds have been raised by the assessee:

*"1. That the Id. CIT(A) has erred both in law and on facts of the case in sustaining the partial disallowance of Advertisement and Business Promotion expenses to the tune of Rs.13,23,600/- on the basis of contention that the same was paid as advance and expenditure has not been crystallized for the year under consideration. This contention of Id. CIT(A) is arbitrary and is based solely on assumptions, surmises and*

*conjectures as full services were performed during the same assessment year against the payment of this amount. Therefore where the services were already performed and benefits from these services has already accrued to Appellate Company, the expenditure is charged to profit and loss account and cannot be said to be an advance payment. Hence this expenditure is fully allowable as expenditure u/s 37(1) of the Income Tax Act, 1961. Therefore Id. CIT(A) has erred in sustaining the disallowance of Rs.13,23,600/- incurred on account of Advertisement and business Promotion expenses.*

*2. That the Id. CIT(A) has erred in both in law and on facts of the case in sustaining the addition of Rs.52,516/- u/s 14A read with Rule 8D of the Income Tax Rules, 1962 as no expenditure was incurred for earning the exempted income. This addition is based solely on assumptions, surmises and conjectures hence it is totally wrong, unjustified & arbitrary which needs to be deleted in full."*

4. The return of income was filed on 15.10.2010 declaring loss of Rs. Rs.4,46,56,632/-. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on 19.10.2010 in the case of IREO Group of cases. During the course of search carried out at the different premises located in India in IREO Group, documents and data storage devices etc. belonging to the assessee company were found and seized.

5. Consequent upon search and centralization, a notice u/s 153A of the Income Tax Act, 1961 was issued to the assessee on 30.12.2011 which was duly served upon the assessee company through speed post, receipt of which is placed on record. The Assessing Officer, on going through the details of the expenditure claimed for the purpose of publicity, advertisement and sales promotion amounting to Rs.3,57,78,862/- has disallowed an amount of Rs.13,23,600/- which has been incurred on 02.03.2010 on account of bill of

Result Services Pvt. Ltd. towards advance payable for Waterfront launch. The AO held that since this is an advance payment and the expenditure appeared to have not been crystallized for the year under consideration, therefore, the same cannot be treated to have been incurred for the relevant previous year and cannot be allowed as expenditure within the meaning of provisions of Section 37(1) of the Act. Hence, the addition to the extent of Rs.13,23,600/- is sustained. The Id. CIT(A) confirmed the disallowance. The returned income for the instant year 2010-11 was loss of Rs.4,46,56,600/-. The returned income for the A.Y. 2011-12 was also loss of Rs.12.76 crores. Hence, the issue raised before us is purely tax neutral in the instant case, hence there is no call to go into the technicalities of the issue. Hence, the appeal of the assessee on this ground is allowed.

**Disallowance u/s 14A:**

6. Not pressed.

**ITA No. 2138/Del/2016**

**Disallowance ABP expenses:**

7. During the year, the assessee incurred an amount of Rs.4.72 crores on account of advertisement and business promotion. Out of which the AO disallowed an amount of Rs.3.98 crores on the grounds that the assessee company has not shown any income from the projects undertaken during the year under consideration.

8. The Id. CIT(A) allowed an amount of Rs.3.52 crores out of the disallowance of Rs.3.98 crores and sustained the

disallowance of Rs.46.45 lacs holding that this expenditure is not in the nature of advertisement and business promotion.

9. Before us, it was argued that these are the expenses indeed pertaining to advertising.

10. We have gone through the expenditure and find that they pertain to barricading for installation of Vinyls, Unipol fabrications and hoardings which are indeed in the nature of advertising. Hence, we hereby direct that the disallowance made by the AO and confirmed by the Id. CIT(A) be obliterated.

11. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 28/01/2022.

Sd/-

**(A. D. Jain)**  
**Vice President**

**Dated: 28/01/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**