

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCE)**

ITA No.1772/Hyd/2019 (Assessment Year : 2007-08)		
Dy. Commissioner of Income Tax, Circle 3(2), Hyderabad.	Vs.	M/s. Surya Kiran International Ltd., Secunderabad. PAN AAGCS9217C
Appellant		Respondent

Appellant By : Shri T. Sunil Goutam (D.R.)
Respondent By : Shri S. Rama Rao, Advocate.

Date of Hearing : 18.01.2022.
Date of Pronouncement : 27.01.2022.

O R D E R

Per Shri Duvvuru RL Reddy, J.M. :

The revenue has filed this appeal against the order of Commissioner of Income Tax (Appeals)-10, Hyderabad dt.05.09.2019 u/s.143(3) of the Income Tax Act, 1961 ('the Act').

2. The only grievance of the revenue is that the learned CIT (Appeals) erred in allowing the trial run expenditure incurred by the assessee of Rs.2,84,52,771 as revenue expenditure ignoring the fact that the

assessee himself treated the expenditure as capital and the assessee had not debited to the P&L Account.

3. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing of readymade garments for the Assessment Year 2007-08. The assessee filed its Return of Income declaring a loss of Rs.6,64,35,362. The return was processed u/s. 143(1) of the Act, subsequently the case was selected for scrutiny and notice was serviced on the assessee. Accordingly, the assessee furnished the information called for. After verification of the details filed by the assessee, the assessment was completed. The Assessing Officer made a disallowance of trial run expenditure claimed by the assessee for an amount of Rs.2,84,52,771 and concluded the assessment and loss assessed at Rs.3,79,82,591. Aggrieved the assessee preferred an appeal before the learned CIT (Appeals) and submitted that the expenditure was not routed through P&L Account, due to the reason that if assessee had shown such expenditure in its P & L Account, there

would be huge loss and consequently difficult to obtain finances but the expenditure under consideration was reflected in the Balance Sheet under the head 'Miscellaneous expenditure' appeared at Schedule 13 of the Balance Sheet. Based on this argument, the learned CIT (Appeals) allowed the appeal of the assessee.

4. On being aggrieved, the revenue preferred an appeal before us and raised the following grounds :

“ 1. The learned CIT (Appeals) erred both in law and on facts of the case.

2. The learned CIT (Appeals) erred in allowing trial run expenditure incurred by assessee at Rs.2,84,52,771 as revenue expenditure.

3. The learned CIT (Appeals) erred in allowing trial run expenditure incurred by assessee at Rs.2,84,52,771 as revenue expenditure ignoring that only after trial run plant and machinery is said to be set up which in this case has finished on 31.03.2007 as per annual report filed by assessee along with Return of Income.

4. The learned CIT (Appeals) erred in allowing trial run expenditure incurred by assessee at Rs.2,84,52,771 as revenue expenditure ignoring that assessee itself treated the expenditure as capital expenditure in its

books that's why not debited to profit and loss account."

The issue before us is that the trial run expenditure as claimed by the assessee is in the nature of capital expenditure or revenue expenditure. There is no dispute about the genuineness of the expenses incurred by the assessee.

5. We have heard both sides and perused the material available on record. The learned departmental representative submitted that the Annual Report which was signed by the Chartered Accountant as well as Directors of the assessee-Company for the A.Y. Year 2007-08. The assessee has not debited trial run expenditure to the P&L Account. He further submitted that the assessee has claimed the expenditure as revenue expenditure in the computation of total income which is not signed by the Chartered Accountant, thereby the assessee has taken two different stands deviating from the Accounting Policy which was adopted by the Chartered Accountant. On

this aspect, the contention of the assessee is that if the assessee has shown such expenditure in their P&L Account, there would be huge loss and consequently finances required for operating the unit from the financial institution would be difficult. Therefore, the assessee has taken two stands one is for income tax purpose and another is for financial institutions like bank, etc. which is not permissible under the law. On this aspect, the ld. DR relied on the decision in the case of Binod Kumar Agarwal Vs. CIT reported in (2018) 94 taxman.com 422 (Cal) and prayed that the order of the CIT(A) to be reversed.

6. On the other hand, learned counsel for the assessee submitted that the learned CIT (Appeals) relied on the Remand Report wherein it was mentioned that the expenditure is a genuine expenditure and all the expenditure is in the nature of revenue, simply treated the expenditure as capital in nature and not debited to the P&L Account is not a valid ground to treat this revenue expenditure as capital expenditure. He further

argued that the learned CIT (Appeals) relied on the Remand Report and allowed the appeal of the assessee. Therefore he prayed that the order of the learned CIT (Appeals) to be confirmed.

7. After considering the submissions by both parties, it is seen that there is no dispute that expenditure is genuine and also the assessee-company filed its final accounts treating the expenditure as capital in nature and also brought to the Balance Sheet. It is an undisputed fact that the assessee did not debit the trial run expenditure to the P&L Account. It is also an undisputed fact that the Auditors and the Directors of the company signed the Annual Report wherein it was noticed that the assessee has not debited trial run expenditure to the P&L Account. The assessee claimed this expenditure as revenue in nature in the computation of its total income which is not signed by any Chartered Accountant. Therefore the assessee has taken two different stands which is not permissible under law. We have also perused the decision relied

upon by the learned departmental representative in the case of Binod Kumar Agarwal Vs. CIT (supra) wherein it was held that once assessee presents the financial statements, as certified by a Chartered Accountant, he precluded to say that for obtaining bank loan, assessee backtrack from such position. When financial statement of an assessee is accompanied by a certificate as to its fairness, it couldn't be tailor-made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon. Thus, it was open to the Assessing Officer and income tax authorities to pin assessee down on basis of assessee's representation contained in earlier balance-sheet and make additions. Therefore the assessee should be estopped from claiming the expenditure as revenue. The Hon'ble Calcutta High Court has categorically laid down that there should not be two different Accounting policies.

8. On the other hand, the assessee submitted written submissions inter alia stating that the entries made in

the Books of Accounts do not decide the nature of receipt or payment. The nature of the entry should be decided in accordance with the Income Tax Act and he further submitted that the entries made in the Books of Accounts are not relevant. The learned counsel for the assessee also relied on the Hon'ble Apex Court decision in the case of Kedarnath Jute Manufacturing Co. Ltd. Vs. CIT 82 ITR 363 (SC). In this case, it is only a mistake of the assessee-company made same entries wrongly in the Books of Accounts. Therefore the hon'ble apex court held that itself is not sufficient to determine the income under income tax Act but in the present case on hand, Annual Report was certified by the Chartered Accountant as well as signed by the Directors of the company, which states that the expenditure is capital in nature. Therefore it is not mere entries made in the Books of Accounts. The learned CIT (Appeals) has relied on the Remand Report, upon perusal of the Remand Report, the Assessing Officer has mentioned that the nature of the expenditure is genuine but he has not

given any finding that the assessee himself treated the trial run expenditure as capital in nature and did not debit to the P&L Account. Apart from this, the decision of the Hon'ble Calcutta High Court is exactly on the similar set of facts, therefore, we are of the view that the learned CIT (Appeals) has erred in appreciating the facts properly and allowed the assessee's appeal. The order of the CIT(A) in the instant case is liable to be reversed. After considering the facts and circumstances of the case, judgment relied upon by the learned DR and as per the discussion above, the appeal filed by the revenue is allowed. Ordered accordingly.

8. In the result, the appeal of revenue is allowed.

Order pronounced in the open court on 27th Jan.,2022.

Sd/-

(A.MOHAN ALANKAMONY)

Accountant Member

Hyderabad, Dt. 27.01.2022.

Sd/-

(DUVVURU RL REDDY)

Judicial Member

* Reddy gp

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2.	DCIT, Circle 3(2), Hyderabad.
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4.	CIT(Appeals)-10, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.