

आयकर अपीलीय अधिकरण  
मुंबई पीठ "ए", मुंबई  
श्री जी. एस. पन्नू, अध्यक्ष एवं  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI  
BEFORE SHRI G. S. PANNU, PRESIDENT &  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 17/मुं/2019 (नि.व.2014-15)  
ITA NO.17/MUM/2019 (A.Y.2014-15)

L & T Seawoods Ltd.  
2<sup>nd</sup> Floor, L & T House,  
N.M. Marg, Ballard Estate,  
Mumbai-400001.  
PAN: **AABCL4524C**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-1(2)(2),  
5<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Marg, Mumbai-400020

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Nitesh Joshi, Advocate

प्रतिवादी द्वारा/Respondent by : Sh. Mehul Jain, Sr-DR

सुनवाई की तिथि/ Date of hearing : 17/06/2022

घोषणा की तिथि/ Date of pronouncement : 12/08/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 02.11.2018 for the Assessment Year (AY) 2014-15.

2. The assessee in appeal has assailed the findings of CIT(A) in confirming the disallowance made in respect of :

(i)	Sales Promotion Expenses	Rs. 23,50,259/-
(ii)	Cost of modal of project	Rs. 31,89,375/-

3. Sh. Nitesh Joshi appearing on behalf of the assessee submitted that the assessee had claimed Sales Promotion Expenses and the Cost of Modal of the project as revenue expenditure. The Assessing Officer (AO) disallowed assessee's claim and treated the aforesaid expenditure as capital in nature. The assessee carried the issue in appeal before the First Appellate Authority. In First Appellate proceedings, the CIT(A) confirmed the findings of the AO *qua* aforesaid two items and deleted the other items of expenditures. The Id. AR pointed that Sales Promotion Expenses disallowed by the CIT(A) are purely in the nature of professional fee paid for market assessment study, market feasibility study, market research etc. The Id. AR pointed that the AO in immediately preceding AY i.e. AY 2013-14, allowed Professional Fee paid to Mahajan & Aibara for market and feasibility study. The Id. AR referred to the assessment order dated 07.03.2016 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2013-14 at page no. 67 to 69 of the Paper Book (PB). The Id. AR further referred to the reply to questionnaire issued under section 142(1) of the Act, during the course of assessment proceedings for AY 2013-14. The Id. AR pointed that the assessee had furnished details of Market & Business Promotion Expenses along with invoices which clearly indicate that the consultancy fee is paid for market research carried out by Mahajan & Aibara. The Id. AR submitted that following the principle of consistency, the expenditure should be allowed. In respect of disallowance of expenditure towards the modal of the project, the Id. AR submitted that the authorities below have erred in capitalizing the expenditure only for the reason that the modal can be retained for a longer time. Whereas, the assessee would not have any enduring benefit

from the modal. The test of endurance alone would not determine the nature of expenditure. To buttress his contentions, the Id. AR placed reliance on the decision of Hon'ble Supreme Court of India in the case of Empire Jute Company Ltd. Vs. CIT 3 Taxman 69 and the decision of Hon'ble Bombay High Court in the case of CIT Vs. Asian Paints India Ltd. 75 taxmann.com 152.

4. Per contra, Sh. Mehul Jain representing the Department vehemently defended the findings of the CIT(A) and prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee is a special purpose vehicle incorporated to execute construction of a railway station and transit oriented development at Seawoods, Navi Mumbai. The assessee had entered into a development agreement with CIDCO for development of integrated commercial complex. The scope of work included construction of Railway Station and development of other commercial, retail and office spaces. In lieu of construction of Railway Station, the assessee was granted sailable rights over the constructed development. The assessee followed Project Completion Method to recognize the profits. During the period relevant to AY under appeal, the assessee incurred Market & Business Promotion Expenses for promoting its development project amounting to Rs. 1,30,96,301/- and claimed the same as Business Expenditure under section 37 of the Act. In assessment proceedings, the AO disallowed entire Sales Promotion Expenses. The expenditure claimed by assessee on marketing and sales *interalia* includes professional payment for market assessment study, professional charges for market research, retainer ship fees, expenditure towards Experience Zone Signage, project modal, etc. In First Appellate proceedings, the CIT(A) granted part relief to the assessee by allowing some of the expenditure

claimed under the head "Market and Sales Expenditure". Following expenditure were held by the CIT(A) as capital in nature.

S.No.	Name of the Party	Bill Amount	Particulars
1	Cushman and Wakefield India Pvt. Ltd.	188765	Market Assessment Study
2	Cushman and Wakefield India Pvt. Ltd.	125843	Market Assessment Study
3	Mahajan & Aibara	113485	Fees for professional services (Market & feasibility study)
4	Jones Lang Lasalle	269664	Professional fees (Market Research)
5	Jones Lang Lasalle	215731	Professional fees (Market Research)
6	Jones Lang Lasalle	53932	Professional fees (Market Research)
7	DDB Mudra max Pvt. Ltd.	1382839	Experience Zone Signages
8	Shekhar Patil & Associates	3189375	Expenditure for Project Model

6. A perusal of the impugned order shows that the CIT(A) has held the aforesaid expenditure to be capital in nature for the reason that market research, real estate consultancy are not in the nature of selling expenses and for the reason that some of the expenditure are non-reckoning expenditure, therefore, should be capitalized. The Id. AR has drawn our attention to the assessment order for AY 2013-14 wherein the AO in scrutiny assessment proceedings after examining the expenditure incurred by the assessee towards the professional services rendered for marketing and feasibility study allowed the same as Revenue expenditure. It is pertinent to mention that the assessee had paid professional charges to the same party in the impugned assessment year as well which has been disallowed by the AO as well as by the CIT(A) in the immediate preceding AY. The nature of services rendered as per the bill raised is identical. Apart from above, we find that the assessee has made payments to various parties for rendering professional services towards market assessment study and

market research. The allowability of these expenditure is not merely based on endurance test or the duration of benefit, the assessee would draw over the period of time. The Hon'ble Bombay High Court in the case of CIT Vs. Asian Paints (supra) had occasion to deal with somewhat similar issue wherein expenditure of corporate brand building was under dispute i.e. whether the expenditure is on capital account or Revenue. The substantial question of law before the Hon'ble Court for consideration was :

*"Whether on the facts and the circumstances of the case and in law the Tribunal was justified in deleting the disallowance made by the Assessing Officer on expenditure on 'Corporate Brand' building, treating such expenditure as revenue in nature?"*

The Hon'ble Court answered the question in favour of the assessee by observing as under:

*"(e) We find that an identical issue had arisen before this Court in case of CIT v. Jeoffrey Manners & Co. Ltd. [2009] 315 ITR 134/180 Taxman 87 (Bom.), wherein the Court was considering a question whether the expenses incurred by the Respondent-Assessee therein for making advertisement films is to be treated as a capital or revenue expenditure. This Court opined that the correct test to be applied in respect of expenditure incurred for making advertisement films was that when the same was incurred in respect of an ongoing business of the Assessee, it is Revenue. On the other hand, when the expenditure is incurred in respect of a brand which is to be used in a business which is yet to be commenced, it is capital expenditure. In this case also, the expenditure on corporate advertisement films is in respect of ongoing business. The expenditure for advertisement of a brand or corporate name of an existing ongoing business is in the nature of maintaining the brand and/or corporate image and it is not for creation of a brand. Further, the test of enduring benefit urged by the Revenue was considered by the Apex Court in Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1/3 Taxman 69 to hold that it is not a conclusive test in all cases so that such expenditure is always on capital account. The Court observed that what is to be examined is the nature of advantage obtained in the commercial sense by incurring the expenditure. If the expenditure consists of merely facilitating the assessee to carry on business more profitably leaving the fixed capital untouched, it would be on revenue account. The entire expenditure, the Court observed, has*

*to be looked at from a businessman's point of view. In the present facts, the expenditure on account of corporate advertisement is to essentially maintain the corporate image and not create a corporate image. Further, the impugned order holds on facts that the corporate advertisement expenditure facilitates the business having a direct impact on sales and profitability of the Respondent-Assessee.”*

7. Thus, the expenditure incurred towards market research and market feasibility study is held to be allowable under section 37 of the Act. Similarly, expenditure on Experience Zone Signage is held to be of Revenue Account as the expenditure is incurred to make the presence of the project visible to the general public/ potential purchasers.

8. We find merit in ground no.1 of the appeal, accordingly, the same is allowed.

9. In ground no.2 of appeal, the assessee has assailed disallowance of cost on model of the project. The expenditure towards the cost of model of the project has been disallowed by the CIT(A) only for the reason that it is one time expenditure and the model would have a long life. We do not concur with the findings of the CIT(A) on this issue. The model has been created only for the purpose of making prospective investors aware about the project which is under completion. It is again an expenditure for marketing the project. We find no merit in holding the expenditure towards the cost of model as capital in nature. It is an expenditure allowable under section 37 of the Act. Consequently, assessee succeeds on ground no.2, as well.

10. The assessee has raised alternate grounds to ground no.1 and ground no.2 seeking direction to the AO to treat the sales promotion expenditure as part of the opening work-in-progress for the next year and allow depreciation on model of the project, respectively. Since, we have allowed primary contentions of the

assessee in the respective grounds, the alternate grounds raised by the assessee have become infructuous, hence, dismissed as such.

11. In the result, appeal of assessee is allowed in the terms aforesaid.

Order pronounced in the open court on **Friday**, the **12<sup>th</sup>** day of August, 2022.

Sd/-  
(G.S. PANNU)

Sd/-  
(VIKAS AWASTHY)

अध्यक्ष / PRESIDENT

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 12/08/2022

SK, Sr. PS

**प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**