

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “C” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2275/DEL/2014  
Assessment Year 2009-10

DCIT, Circle-12(1), New Delhi.	v.	Globus Spirits Ltd., C-631 New Friends Colony, New Delhi.
TAN/PAN: AAACG2634B		
(Appellant)		(Respondent)

I.T.A. No.1522/DEL/2015  
Assessment Year 2011-12

DCIT, Circle-10(1), New Delhi.	v.	Globus Spirits Ltd., C-631 New Friends Colony, New Delhi.
TAN/PAN: AAACG2634B		
(Appellant)		(Respondent)

Appellant by:	Shri Parveen Kumar, CA		
Respondent by:	Shri Gurpreet Shah Singh, Sr. DR		
Date of hearing:	27	07	2022
Date of pronouncement:	18	10	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals)-XV, New Delhi [‘CIT(A)’ in short] dated 30.01.2014 and 26.12.2014 arising from the assessment order dated 31.03.2009 and 31.12.2013 respectively passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act)

concerning AY 2009-10 & 2011-12 respectively.

2. The grounds of appeal raised by the Revenue read as under:

ITA No.2275/Del/2015 Assessment Year 2009-10

1. *Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in restricting the addition of Rs.3,61,08,578/- to Rs.1,07,85,501/- which was made by Assessing Officer on account of disallowance of brand promotion expenses?*

2. *Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs.1,92,319/- made by the Assessing Officer on account of late deposition of employees contribution fund ignoring the fact that there are divergent view amongst different court?"*

3. Ground No.1 concerns disallowance of brand promotion expenses.

4. Briefly stated, the assessee is engaged in the business of manufacture and sale of country liquor and Indian made foreign liquor (IMFL). The assessee filed its return of income for Assessment Year 2009-10 under Section 139(1) of the Act declaring taxable income at Rs.11,00,40,460/-. A revised return was filed thereafter by the assessee revising the taxable income at Rs.7,39,31,880/-. The case was selected for scrutiny assessment. The Assessing Officer *inter alia* observed that the assessee has claimed brand promotion expenses of Rs.4,57,61,241/- as revenue expenses in contrast to the fact that the assessee itself had capitalized such expenses under the head intangible knowhow and New Brand Development in its books of account. The Assessing Officer accordingly denied such claim as revenue expenditure. In parity with the admission of fact of incurring capital expenditure in sync with audited books of account, the Assessing Officer thus

treated the expenditure as capital expenditure. The Assessing Officer accordingly granted relief by way of depreciation of Rs.96,52,663/- thereon and consequently increased the assessed income to the extent of Rs.3,61,08,578/- on this score.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) after perusal of expenses, admitted the claim of the assessee to be revenue expenditure to the extent of Rs.3,18,80,573/- but however confirmed the balance amount of Rs.1,43,80,668/- as capital expenditure. Depreciation of Rs.35,95,167/- @ 25% thereon was thus allowed on the expenditure treated to be capital in nature.

6. Aggrieved by the part relief, the Revenue preferred appeal before the Tribunal. The assessee also filed Cross Appeal towards the amount confirmed by CIT(A) to be capital expenditure.

7. The assessee however availed Vivad se Vishwas Scheme, 2020 in its appeal in ITA No.2090/Del/2014 in Assessment Year 2009-10 and thus the appeal of the assessee was dismissed as withdrawn vide order of the Co-ordinate Bench dated 8<sup>th</sup> February, 2021.

8. We are now concerned with the appeal of the Revenue. As pointed out on behalf of the assessee at the outset, the identical issue came up in Assessment Year 2008-09 in ITA No.2585/Del/2012 order dated 27.06.2017, the relevant discussion and conclusion thereon concerning Assessment Year 2008-09 is reproduced hereunder:

*“4. Ground No. 2 : The Assessing Officer made disallowance of Rs. 1,79,77,181/- being the amount of revenue expenditure*

*under various heads of expenditure capitalized in the books of accounts as intangible know-how and new brand development, which the assessee in its return of income had claimed as revenue expenditure. The Assessing Officer treated the said expenses as capital in nature on the ground that these expenses give benefit of enduring nature and further that the assessee itself recognized the same to be on capital account in its books of accounts. The Id. CIT (Appeals), however, being satisfied with the explanation of the assessee has deleted the disallowance.*

*4.1 In support of the ground the Id. Sr. DR submitted that assessee itself had admitted that the expenditure incurred were capital in nature. Heavy expenses were incurred on brand building. The action of the Assessing Officer, thus cannot be held erroneous in treating said expenses as capital in nature on the ground that these expenses give benefit of enduring nature and further the assessee itself had recognized the same to be on capital account in its books of account.*

*4.2 The Id. AR, on the other hand, placed reliance on the first appellate order. He submitted that assessee is in the business of manufacture and sale of country liquor and Indian made foreign liquor (IMFL). In the course of its existing business of sales and marketing of liquor products, in addition to existing brand and in existing States, during the year the assessee who has to increase the sale of its products had introduced some new brands and also entered and increase focus on new States. As per the Excise Policy of States various registrations / license fees are required to be paid in every State for manufacture and sale of liquor products which are annual fees and are paid year to year on their renewal. During the year the assessee company as an accounting policy matter, instead of debiting the said expenses under the respective heads of expenditure, capitalized part of the same, under the head "intangible assets / brand development". No new brand was purchased. The brand development expenses were incurred in the course of existing business of manufacturing and sale of liquor. He placed reliance on the following decisions*

- (i) Empire Jute Company Vs. CIT 124 ITR 1 (SC);*
- (ii) CIT Vs. Siti Financial Consumer Fin. Ltd., 335 ITR 29 (Del.);*

- (iii) *CIT Vs. Usha Iron & Ferro Metal Corporation Ltd., 296 ITR 140 (Del)*
- (iv) *CIT Vs. Salora International Ltd., 308 ITR 199 (Del);*
- (v) *CIT Vs. Liberty Group Marketing Division 315 ITR 125 (P & H);*
- (vi) *Sony India Pvt. Ltd. Vs. DCIT, 315 ITR 150 (AT) (Del.)*
- (VII) *CIT Vs. Core Health Care Ltd., 308 ITR 263 (Guj.)*

4.3 *On perusal of the orders of the authorities below, we find that though during the year the assessee had capitalized a sum of Rs.1,79,77,181/- under the head tangible / know-how and brand development in the books and had claimed depreciation thereon. However, after realizing that the expenses so capitalized are of Revenue in nature, the assessee vide its revised return claimed the same as revenue expense and consequently reduced the depreciation claimed thereon. The Id. CIT (Appeals) has noted the following material facts :-*

- i) *The appellant is in the business of manufacture and sale of country liquor and Indian made foreign liquor.*
- ii) *In the course of its business and for the marketing for its products the appellant incurs various expenses which are claimed and allowed as revenue expense.*
- iii) *As per the excise policy of States various annual registration/license fees are required to be paid in every state for the manufacture and sale of liquor products in respective States.*
- (iv) *In the course of its existing business of manufacture and sale of liquor products, in addition to the existing brands in existing States, during the year, the appellant introduced some new brands and also entered and increased focus on new states so as to increase the sale of its products.*
- v) *Because of accounting policy, the routine business expenses of the nature mentioned above in relation to marketing of its new brands / products and in new States, instead of debiting under the respective heads of expenditure, were capitalized under the head intangible assets / brand development.*

*4.4 On the basis of above material facts, the Id. CIT (Appeals) has come to the conclusion that the expenses claimed as Revenue expenses in this year are routine business expenses required to be incurred in the course of business. The marketing and brand promotion is an integral part of business activity of the assessee company and the entire expenses are of routine business expenses and have been incurred in the course of running the existing business. The Assessing Officer has not pointed out any specific expense, which is of enduring benefit or has been incurred to acquire any capital asset. Such expenses in respect of on-going business are undisputedly Revenue in nature.*

*Under the above facts, we fully concur with the findings of the Id. CIT (Appeals) also because similar recurring expenses incurred in earlier years have been allowed as Revenue expenses. The decisions relied upon by the Id. CIT (Appeals) also strengthen the finding arrived at by him under the facts and circumstances of the present case on the issue. The Hon'ble Supreme court in the case of Empire Jute Company Vs. CIT (supra) has been pleased to hold that it is only when an enduring advantage is in the capital field that the expenditure would be disallowable. If advantage of enduring benefit is in the Revenue field it would be on the Revenue account. The Hon'ble jurisdictional High Court of Delhi in the case of CIT Vs. Siti Financial Consumer Fin. Ltd. (supra) has been pleased to hold that advertisement and publicity expenses even when substantial, having been incurred to facilitate business, no advantage in capital field is resulted. Again in the case of CIT Vs. Usha Iron & Ferro Metal Corporation Ltd. (supra) the Hon'ble jurisdictional High Court of Delhi has been pleased to hold that the expenditure incurred by the assessee towards improving its business was for the expansion of its existing business. Merely because the assessee treated the amount as a capital expenditure in its books, it would not be bound by as there is no estoppels against the law and just assessment is the object of the Legislature under the provisions of the I.T. Act. The first appellate order on the issue is comprehensive and reasoned one to which we fully concur with. The same is upheld. Ground No.2 is accordingly rejected.”*

9. The issue is thus not res-integra and the identical issue was examined by the Co-ordinate Bench in Assessment Year 2008-09. The Assessing Officer has also rested its decision to deny the

claim on the basis of findings in Assessment Year 2008-09. Hence, in parity with the view taken by the ITAT, we do not see any error in the findings given by the CIT(A) in favour of the assessee. We thus see no reason to interfere with the order of the CIT(A).

10. Ground No.1 of the appeal of the Revenue is dismissed.

11. Ground No.2 concerns addition on account of late deposit of employee provident fund. The Co-ordinate Bench of Tribunal in ITA No.1957/Del/2022 in the case of Innovision Ltd. order dated 21.09.2022 has decided the issue in favour of the assessee. In parity, we see that no error has been committed by the CIT(A) while granting relief to the assessee. We thus decline to interfere with the order of the CIT(A).

12. Ground no.2 of the appeal of the Revenue is dismissed.

ITA No.1522/Del/2015 Assessment Year 2011-12

13. The grounds of appeal raised by the Revenue read as under:

*1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2,70,54,194/- made on account of capitalization of Brand Promotion expenses.*

*2. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.52,32,991/- made on account of short term capital gain on sale of mutual funds ignoring the fact that it was not claimed either in original return or revised return filed.”*

14. Ground No.1 is identical to Ground No.1 of ITA No.2275/Del/2015 except for the change in the quantum of

disallowance. In parity with the principles appreciated in ITA No.2275/Del/2015, we see no merit in the grievance of the Revenue. In our view, The CIT(A) has not committed any error which may warrant interference.

15. Ground No.1 of the Revenue's appeal is dismissed.

16. Ground No.2 concerns addition on account of short term capital gain.

17. The CIT(A) has dealt with the issue as under:

*“5.5 Regarding the Ground No.5 of the appeal, the Ld. Counsel submitted that by an inadvertent mistake, the appellant company had offered an amount of Rs.52,32,991/- as short term capital gain, whereas the same was in the nature of exempt dividend income. It was submitted that during the course of assessment proceeding, vide letter dated 3.10.2013, the Ld. AO was requested to give correct treatment to this income. The Ld. Counsel was aggrieved that the Ld. AO took shelter in the decision of Goetze (India) Ltd. (Supra) and did not allow the lawful claim of the appellant.*

*5.5.2 Furnishing further details, the Ld. Counsel submitted that the appellant had made investment in mutual funds and as per the relevant schemes, the entire amount of dividend earned was to be reinvested therein and on redemption of the same, the initial investment amount and the dividend reinvested thereon is received by the company. It was submitted that the said amount of Rs.52,32,991/- comprises of original investment and dividend income earned thereon. The Ld. Counsel also informed that accordingly, an amount of Rs.31,46,355/- was shown in the return of income for AY 2010-11 as exempt dividend income. A copy of the details of the dividend income for computation of income for AY 2010-11 was filed before me. The Ld. Counsel filed the bread-up of the same as under:*

Particulars	Date of Invt.	Amount Invested	Date of Redmp.	Amount of Redmp.	Div. Re-invest.	Div. taken last year	Div. income of AY 2011-12	Capital Gain	Invt. as 31.3.2011	Remark
Reliance Mutual Fund/ Money Manager. No fresh investment during year. Investment in last year out of surplus IPO funds	25.9.2009	16,00,00,000	17.5.2010	16,40,26,308	40,26,308	31,46,365	879,953			Investment redeemed during the year. Exempt income received along with original
Reliance Mutual Fund/ Money , Manager Invested from SBI, CC account	30.11.2010	2,00,00,000	2.12.2010	2,00,08,837	8,837	NA	8,837	0		Holding for 3 day only.
Reliance Mutual Fund/ Money Manager, Dividend reinvest only	31.3.2010		NA	NA	5,58,052	NIL	558,052	NA	558,052	Dividend income re-invested
LIC MF Saving Plus Fund. Invested out of own funds from ICICI Bank account	20.5.2010	16,40,00,000	20.7.2010	16,51,97,846	11,97,846	NA	1,197,846	0		Investment made out of proceeds of redemption of Reliance Mutual Fund received
SBI Mutual Fund. Invested from SBI, CC account.	31.3.2011	1,00,00,000	NA		0	NA	0	0	10,000,000	1 day
<b>TOTAL</b>							26,44,688		10,558,052	

*Total Dividend received = 31,46,355 (in AY 2010-11) +26,44,688 (in AY 2011-12)=57,91,043*

*5.5.3 The Ld. Counsel relied upon the CBDT Circular No.14, dated 11.4.1955, in which it was held that the department should not take advantage of the assessee's ignorance to collect more tax out of him than the liability due to him.*

*Reliance was placed on the Bombay High Court in the case of Balmukund Acharya v. DCIT 310 ITR 310, in which it was held that the authorities under the Act are obliged in accordance with law. Reliance was also made on the following cases:*

- (i) Nirmala L Mehta v. A. Balasubramaniam, CIT (2004) 269 ITR 1 (Bom);*
- (ii) ACIT v. Technofab Engg. Ltd. 2009 TIOL, 664 ITAT (Del); and*
- (iii) CIT v. Ramco International, 332 ITR 0303 (P&H).*

*5.5.4 The Ld. Counsel also pleaded that no new claim based on new facts has been made by the appellant. Reliance was placed on the decision of Punjab & Haryana High Court in the case of Ramco International (Supra), in which having referred to the Goetz (India), case it was held that any admissible claim under*

*the . Act can be made during the assessment proceeding through filing of letter and filing of revised return is not mandatory.*

*5.5.5 Without prejudice, the Ld. Counsel submitted that this claim can be filed before me as the Goetz (India) decision allows filing of new claim before the appellate authorities.”*

18. On a perusal of the order of the CIT(A), it appears that owing to an inadvertent mistake, the assessee has wrongly offered exempt income received by way of dividend as short term capital gain which is otherwise not taxable in law. The CIT(A) has examined the issue threadbare and found as a matter of fact that such income inadvertently offered as taxable income under the head ‘Short Term Capital Gain’ is exempt income indeed and not susceptible to taxation.

19. In these facts, the CIT(A), in our view, has rightly applied the underlying principles of CBDT Circular No.14 dated 11.04.1955 wherein it was observed that the Department should not take advantage of the ignorance of the assessee and collect more tax without the same being due. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by the authority of law. Acquiescence cannot take away from a party, the relief that he is entitled to.

20. The Hon’ble Allahabad High Court in *Smt. Raj Rani Gulati vs. CIT (2012) as reported in 249 CTR 51 (All.)* observed in similar facts with reference to *GOETZE (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC)* that the assessee was entitled to raise legal issue before First Appellate Authority which possessed *co-terminus* powers similar to the Assessing Officer. In that case, the assessee filed the return of income and *inter alia* declared Long Term Capital Gain taxable at 20% which was accepted by the

Assessing Officer. The assessee did not file revise return. Before the CIT(A), the assessee contended that the assessee by mistake offered capital gain tax at 20% whereas the tax rate applicable stands at 10% as per the provisions of law. In these facts, the relief granted by the CIT(A) was declined by the Tribunal. The Hon'ble High Court restored the order of the CIT(A).

21. Thus, where the CIT(A) found on facts that the redemption amount of investment also comprises of certain exempt dividend income which has been wrongly offered for capital gain tax, the action of the CIT(A) in granting suitable relief cannot be faulted. In the absence of any rebuttal on facts, we see no reason to interfere with the relief granted by the CIT(A) in accord with law. We thus see no merit in the Ground No.2 of the Revenue's Appeal.

22. Ground No.2 of the Revenue's Appeal is dismissed.

23. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 18/10/2022.**

Sd/-  
[KUL BHARAT ]  
JUDICIAL MEMBER  
DATED: /09/2022  
*Prabhat*

Sd/-  
[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER