

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 954/DEL/2019
Assessment Year: 2015-16**

Jiva Ayurvedic Pharmacy Ltd., Building No. 6772, Block No. 10, Street No. 3, Dev Nagar, Karol Bagh, New Delhi-110005. PAN: AABCJ7326A	<u>Vs</u>	ACIT, Circle-13(2), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Kumar Vikram, Adv.	
Department represented by	Sh. Anuj Garg, Sr. DR	
Date of hearing	10.04.2023	
Date of pronouncement	13.04.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 20.12.2018 passed by the Commissioner of Income Tax (Appeals)-5, New Delhi (hereinafter referred

as “learned First Appellate Authority” or in short “FAA”) in appeal no. Del/CIT(A)-5/0112/2017-18 for the assessment year 2015-16, arising out of assessment order dated 27.12.2017 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Assistant Commissioner of Income Tax, Circle-13(2), New Delhi (hereinafter referred in short as “Ld. AO”).

2. The assessee is engaged in the business of manufacturing of ayurvedic drugs and pharmaceuticals with the brand name ‘JIVA’ and running various ayurvedic clinics all over the country. Return declaring income of Rs. 2,72,58,140/- under normal provisions and at book profit of Rs. 1,92,33,678/- was filed, which was taken up for scrutiny assessment. The dispute involved is in regard to the claim of Rs. 10,65,017/- out of advertisement expenses amounting to Rs. 56,80,090/- being disallowed by the learned AO on the finding that the expenditure is giving enduring benefit to the assessee, therefore, creating an intangible asset and such an expenditure is not revenue but capital expenditure. Accordingly 25% of the advertisement expenses were capitalized and depreciation @ 25% was allowed treating the same as intangible asset.

3. Learned CIT(Appeals) has confirmed the same by reducing it to 5% of the total expenditure.

4. Accordingly, the assessee is in appeal and following ground is raised:

“That the Respondent has erred in holding that 5% of the total expenditure claimed is towards the creation of brand value of the appellant company which is capital in nature and accordingly, the disallowance is restricted to 5% of the total expenses as capital in nature.”

5. Heard and perused the record.

6. Learned AR relying various judgments of Hon'ble Delhi High Court and Coordinate Benches of Delhi in CIT Vs. M/s Spice Distribution Ltd. 2014-TIOL-1856-HC-DEL-IT; CIT Vs. Adidas India Marketing (P) Ltd. 2009-TIOL-824-HC-DEL-IT; CIT Vs. M/s Vodafone Essar South Ltd. 2014-TIOL-2045-HC-DEL-IT; DCIT vs. M/s Paramount Surgimed Ltd. 2017-TIOL-1660-ITAT-DEL; CIT vs. Casio Indi Ltd. 2011-TIOL-368-HC-DEL-IT; CIT Vs. CITI Financial Consumer Finance Ltd. 2011-TIOL-309-HC-DEL-IT; and Times Publishing House Ltd. vs. DCIT 2019-TIOL-23-ITAT-DEL, has submitted that the expenditure when made and incurred wholly and exclusively for the purpose of business, the same deserves to be allowed without arbitrary disallowance. He submitted that no intangible asset is created and even otherwise if intangible asset of the nature of goodwill is created the same is monetized when the business is sold.

7. Learned DR however supported the findings of learned tax authorities below.

8. Appreciating the matter and the submissions it comes up that there is no dispute with regard to the genuineness of the expenditure or that the expenditure were under the head 'advertisement expenses' which is part of selling and distribution expenses. The Bench is of the considered opinion that creation of goodwill is not a primary end of all such expenditures rather goodwill is a by-product of the primary business activity. Mere by advertisement expenses a brand value may be created for a short term but the enduring benefit of which learned AO talks is outcome of the business activity to the satisfaction of customers. It is not justified to disallow the expenditure on account of assertion that distribution expenses that create a brand value is a capital expenditure.

9. Even otherwise there is force in the contention of learned AR on the basis of judicial pronouncements that when the expenses are not doubted to be incurred wholly and exclusively for purpose of business, then for creation of goodwill disallowance of expenditure is erroneous as that asset in the form of goodwill once created is monetized when the business is sold. Learned CIT(Appeals) has fallen in error in not appreciating the aforesaid proposition of law and arbitrarily concluding

that 5% of expenditure is towards creation of brand value, is capital in nature. The ground raised is sustained.

10. The appeal is allowed.

Order pronounced in open court on 13.04.2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI