

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "F" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 632/Mum/2023 (A.Y. 2015-16)

M/s. Vijay Flexible Containers Private Limited 2 nd Floor, Rohit Chamber Janmabhoomi Marg, Fort Mumbai-400 001. PAN : AAECV5295K (Appellant)	Vs.	DCIT-1(3)(1) Aayakar Bhavan M.K. Road Mumbai 400 020. (Respondent)
---	-----	---

Assessee by	Shri Rakesh Sukharia
Department by	Ms. Naina Krishnakumar
Date of Hearing	28.06.2023
Date of Pronouncement	06.07.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 7.2.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2015-16. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 89.07 lakhs made by the Assessing Officer by treating the expenditure claimed by the assessee as capital in nature.

2. The facts relating to the issue are stated in brief. The assessee is engaged in the business of manufacture of Form fill and sealing machines, which are used in packaging FMCG and other similar products. During the course of scrutiny proceedings, the Assessing Officer noticed from the return of income filed that the assessee has claimed deduction of Rs.89,07,340/- as any other sum allowable as deduction. In this regard, the Assessing Officer noticed following facts:-

- (a) that the assessee has, however, treated the above said expenditure as “deferred revenue expenditure” in the books of accounts and was amortising the same in five years. However, for the income tax purposes, the assessee claimed the entire amount as deduction.
- (b) that the assessee has not booked any sales during the year under consideration.
- (c) that some of the direct expenses incurred by the assessee was booked as “work in progress as inventory of goods” to be sold in future.
- (d) However, some indirect expenses has been claimed as expenditure in the profit and loss account.

Accordingly, the Assessing Officer took the view that the assessee has claimed deduction of Rs. 89,07,340/- only to suppress profits, also to lower the tax liability and avail the benefit of carry forward of loss in order to set off the same against future profits.

3. The Assessing Officer also took the view that the expenses of Rs.89,07,340/- incurred by the assessee consisted of exhibition expenses, foreign & local travelling, telephone calls etc., and these expenses have resulted in building up a benefit of “intangible nature” that may accrue in future. Accordingly the Assessing Officer took the view that the above said expenditure is capital in nature and accordingly disallowed the claim of Rs.89,07,340/-. However, the AO allowed depreciation @ 25% thereon. Accordingly the Assessing Officer computed the net disallowance of Rs.66,80,050/-.

4. The learned CIT(A) observed that these expenses can at best be treated as “pre-commencement” expenses made by the company in order to explore the market abroad. Accordingly he held that these expenses cannot be allowed as revenue expenditure. The learned CIT(A) also agreed with the view

taken by the AO and accordingly confirmed the addition and hence the assessee has filed this appeal before the Tribunal.

5. The Learned AR submitted that the assessee is engaged in the business of manufacturing of machines. It has already set up its business and has commenced its operations. This is evident from the observations made by the AO himself in the assessment order, wherein he has observed that the direct expenses incurred by the assessee in manufacturing of machines have been classified as work in progress in Inventory. He submitted that the very fact of manufacture of machineries would show that the assessee has commenced its operations. He submitted that the assessee has claimed only indirect expenses as deduction and the said expenses consisted of travelling, exhibition expenses, marketing expenses and telephone expenses. He submitted that these expenses cannot be classified as capital expenditure. Accordingly, he submitted that the tax authorities are not justified in treating these expenses as capital in nature.

6. On the contrary, learned DR supported the order passed by the learned CIT(A).

7. We have heard the rival contention and perused the record. We noticed that the business of the assessee consisted of manufacture and sale of Form fills and ceiling machines. A perusal of the balance sheet would show that the assessee has debited a sum of Rs. 2,12,96,680/- as inventories. In the Notes to the accounts, which is placed at page No. 36 of the paper book, the assessee has stated that it has started manufacturing of packaging machines. The said notice extracted below :-

“During the previous year company was started manufacturing of Packaging Machine and has completed 95 % of machine named Vilay-110, & during the current year company stand manufacture another machine named Vilay Compact-119, which also under process of development and

it has completed around 30%, which is now ready to sell in the market. Hence all the expenses related to manufacturing of machine like Raw materials, salaries, & Market related expenses are treated as part of Manufacturing cost and transfer to semi finished goods.”

The fact that the assessee has started manufacturing of packaging machines would show that the business of the assessee has been set up and even commenced. It is well settled proposition of law that the revenue expenses incurred after the setting up of the business is allowable as deduction, even if the business has not commenced. Hence, the view taken by the learned CIT(A) that pre-commencement expenses are not allowable as revenue expenditure cannot be sustained.

8. We noticed that the above said claim of Rs. 89.07 lakhs consisted of following expenses :

Sr. No.	Particulars	Amount (Rs.)
1	Foreign Travelling Exp	3,367,797.00
2	Travelling Expenses	2,294,213.00
3	Exhibition Expenses	2,612,558.00
4	Marketing Expenses	202,532.00
5	Telephone Exp	430,240.00
	Total Rs.	8,907,340.00

A Perusal of the said expenditure would show that all the expenses have been incurred in the normal course of carrying on business in order to capture the market. Hence, in our view, these expenditures cannot be considered as capital in nature. Further, we are of the view that the Assessing Officer was not justified in holding that these expenditure would create an asset of intangible nature “in future” and further, the AO has taken this view only on surmises and conjectures without any basis.

9. Next point is whether the assessee is entitled to claim expenses fully for income tax purposes, when it has treated the same as deferred revenue expenditure in the books of accounts. It is well settled proposition of law that the entries made in the books of account are not relevant for the purpose of computing total income. In support of the above proposition, learned AR placed his reliance on the decision rendered by Hon'ble Calcutta High Court in the case of CIT Vs. Berger Paints (India) Ltd. (2002) 254 ITR 503 (Cal) and also the decision rendered by Hon'ble Delhi Bench of the ITAT in the case of JCIT Vs. Modi Olivetti Ltd. (2004) 84 TTJ Delhi 1038. Accordingly, we hold that the action of the assessee in treating this expenditure as deferred revenue expenditure in the books of account will not bar the assessee from claiming it as revenue expenditure for the income tax purposes. If the claim of the assessee is allowable in terms of sec.30 to 37 of the Income tax Act, the same should be allowed. In this case, it is not the case of the AO that the above said expenses are not allowable under any of the provisions of the Act.

10. The tax authorities have also taken a view that the assessee has not shown any sales in the books of account. It is well settled proposition of law that, once the assessee has set up his business, all revenue expenses are allowable as deduction irrespective of the receipt of income. In support of this proposition, the Ld A.R brought to our attention the decision of Hon'ble Supreme Court rendered in the case of CIT Vs. Rajendra Prasad Mody (115 ITR 519). Accordingly, we reject the view taken by the tax authorities on this proposition.

11. In view of forgoing discussions, we are of the view that the learned CIT(A) was not justified in confirming the disallowance made by the Assessing Officer. Accordingly we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the net disallowance of Rs.66,80,505/- made by him.

12. In the result, appeal filed by the assessee is allowed.

Pronounced in the open court on 6.7.2023.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai.; Dated : 06/07/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS