

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2475/MUM/2023 (A.Y: 2015-16)

DCIT-CIRCLE-4(1)(1) Room No. 640, 6 th Floor Aaykar Bhavan, M. K. Road Mumbai - 400020 PAN: AA ACT1449D	v.	India Bullion and Jewellers Association Limited 185, Bullion Exchange Sheikh Memon Street Zaveri Bazar Mumbai - 400002
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Prateek Jain
Department Represented by	:	Shri H.M. Bhatt
Date of Conclusion of Hearing	:	26.02.2024
Date of Pronouncement	:	28.02.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 15.05.2023 for the A.Y.2015-16.

2. Brief facts of the case are, assessee company is engaged in business of apex association of manufactures, traders and businessman from the bullion Industry. Activity of the assessee company is gold/silver melting, gold silver assaying, computer touch and hallmarking. Assessee filed Return of income on 29.09.2015 declaring returned loss of (-) ₹.1,64,95,036/-. Subsequently, revised return of income was filed on 14.01.2017 declaring return loss of (-) ₹.1,26,90,675 and book profit of ₹.75,628/- and the return of income was processed under section 143(1) of Income-tax Act, 1961 (in short "Act").

3. Subsequently, the case was selected for "Limited Scrutiny" under CASS and notices u/s. 143(2) and 142(1) of the Act was issued and served on the assessee. In response, Authorised Representative of the assessee attended and submitted the relevant information as called for.

4. During the course of assessment proceedings, Assessing Officer observed from the computation of total income that the assessee had claimed deferred expenses of ₹.2,38,49,152/-. However, this expense was not reflected in the Profit & Loss a/c. In fact, it was reflected in the Balance Sheet as 'Other Non-current Asset'. It is noticed that on perusal of audited accounts of the assessee that the assessee has shown an

amount of ₹.2,38,49,152/- as 'deferred asset' as per note 14 under 'non current asset' in its audited balance sheet for the year under consideration. Further it is noticed that the assessee has reduced this amount as 'any other amount allowable as deduction' while computing its income from business or profession under Schedule BP of the ITR.

5. In this regard, the assessee was asked to explain the nature of the expense along with justification for the same. In response, assessee vide letter dated 16.11.2017 submitted that the expenditure was incurred in connection with arranging India International Bullion Summit.

6. After considering the submissions of the assessee, Assessing Officer rejected the submissions of the assessee and proceeded to complete the assessment by determining the income of the assessee at ₹.1,10,10,650/- by adding "Disallowance of deffered expenses of ₹.2,38,49,152/-, observing as under: -

"5.3 It is observed from the records that the assessee is a no profit / no loss entity. There is hardly any expense / receipts in the P&L a/c. However, this one-time significant expenditure was incurred so as to bring out the association into the limelight. As per the assessee's own submission, the activities of the assessee came to a standstill in 1980 because of the Gold Control Act. In 2000, due to discontinuation of the Gold Control Act, the assessee was revived but could not succeed due to fund shortage. For bringing out the assessee Association into the limelight, it was decided that one

annual event i.e the India International Bullion Summit must be held. This shows that for 20 years before such an expense was never incurred. All of a sudden, the assessee has incurred an exceptional one-time expense which has rightly been capitalized by the Auditors.

5.4 As per the established accounting practices, a deferred asset is an expenditure that is made in advance, and is not yet consumed. It arises from one of two situations:

- Short consumption period: The expenditure is made in advance, and the item purchased is expected to be consumed within a few months. This deferred asset is recorded as a prepaid expense, so it initially appears in the balance sheet as a current asset.*
- Long consumption period: The Expenditure is made in advance, and the item purchased is not expected to be fully consumed until a large number of reporting periods have passed. In this case, the deferred asset is more likely to be recorded as a long-term asset in the balance sheet.*

The reason for treating expenditures as deferred assets is that they would otherwise be charged to expense before the related benefits had been consumed, resulting in inordinately high expense recognition in earlier accounting periods, and excessively low expense recognition. in later period. The deferred asset concept is not applied when a business uses the cash basis of accounting, since expenditures are recorded as expenses as soon as they are paid for under that method. Thus, these items would be charged to expense at once under the cash basis of accounting. The assessee follows mercantile method of accounting consistently.

5.5 The auditors of the assessee company M/s.Kailashchand Jain & Co., CAs have put the above mentioned expenditure under "Non-Current Assets" in the audited Balance Sheet of the assessee and not under "Current Assets". This implies that after examining the nature and scope of the above said expenditure during the statutory audit; they were of the opinion that the assessee will get benefits of this expenditure over a large number of years. If the claim of the assessee is accepted that this is a period expenditure and allowable as deduction in current year itself; the auditors of the assessee would have charged the same to Profit and Loss account and not capitalized

as "Non-current (Long Term) Assets". The assessee is contradicting itself by claiming that through this expenditure is a "Long Term Asset" for the purpose of preparing accounts as per the provisions of Companies Act but the same is a period expense and allowable as deduction in this year itself for the purpose of determining income of the assessee under Income Tax Act, —

5.6 Further, at note 30 in "notes to Financial Statements" following disclosure is given:

"The Company believes that no impairment of asset has arisen during the year as per the accounting standard - 28 "Impairment of asset" except the - net differed expenses of Rs.3,80,43,607/- incurred for conducting the 15 India International Bullion Summit and Rs.2,36,42,462/- for 24 India International Bullion Summit, Further, the company will defer on tenth of the expenses from the next year of determination of such expenses,"

This disclosure in notes to accounts of the assessee is totally misleading and vague. As per the "Accounting Standard-28"; if any asset is impaired during the year than amount of such impairment should be reduced from the value of impaired asset and the same should be charged to Profit & Loss account immediately. The relevant provision of AS-28 is as under:

"57, If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset should be reduced to its recoverable amount. That reduction is an impairment loss.

58. An impairment loss should be recognized as an expense in the statement of profit and loss immediately, unless the asset is carried at revalued amount in accordance with another accounting standard (See Accounting Standard (AS) 140, Accounting for Fixed Assets}, in which case any impairment loss of a revalued asset should be treated as a revaluation decrease under that Accounting Standard."

Since the assessee has neither reduced the value of its "Differed Assets" in its Audited Balance Sheet nor charged any amount as an expense in the statement of profit and loss, it cannot take refuge under the provisions of Accounting Standard -28.

5.7 As per the assessee's own admission, the expense related to a summit in October 2013 and is a yearly task to establish the name of the assessee. Thus, it was in nature of a capital expense and was not routine in nature. The benefit of such expenditure will accrue over a period of time. As per Section 37(1) of the Act, only those expenses which are revenue in nature and has business expediency are allowable. The assessee has claimed huge losses in its return of income without any justification. Since the expenditure claimed in schedule Business Profession (BP) of the ITR of the assessee as "any other amount allowable as deduction" is capital in nature, the condition of Section 37(1) are not satisfied, hence the same is disallowed and added to the total income of the assessee.

5.8 In view of the above, the deferred revenue expenditure of Rs,2,38,49,152/- is hereby disallowed u/s 37(4) of the Act. Penalty proceedings u/s.271(1)(c) are initiated separately for furnishing inaccurate particulars of its income.

(Addition: 2,38,49,152/-)"

7. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and filed detailed submissions. After considering the detailed submissions of the assessee, Ld. CIT(A) allowed the grounds raised by the assessee by deleting the addition made by the Assessing Officer.

8. Aggrieved, revenue is in appeal before us raising following grounds in its appeal: -

"i. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of deferred expenses of Rs. 2,38,49,152/- by holding that different treatment given in the books of account could not be a factor to deprive assessee from claiming entire expenditure as a deduction in the year in which it was incurred.

ii. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the expenditure on account of organization of summit amounting to Rs 2,38,49,152/- as Revenue Expenditure, ignoring the fact that the Auditor has rightly amortized the expenditure considering the enduring benefit of the expenses to the assessee.*

iii. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the expenditure on account of organization of summit amounting to Rs. 2,38,49,152/- as Revenue Expenditure, ignoring the fact that the expenses incurred for the summit got drastically reduced from A. Y. 2017-18 onwards because of the increase in the brand value of the association, also the Auditor stopped amortizing the expenses for the summit from A. Y. 2018-19 onwards and debited the same to the P& L account.*

iv. *"The appellant craves leave to add, amend, alter and/or vary any of the grounds of appeal before or at the time of hearing."*

9. At the outset, Ld. AR brought to our notice that on identical facts, similar ground which assessee has raised before the Coordinate Bench in ITA.No. 725/Mum/2020 for the A.Y.2014-15 has been considered and adjudicated the issue by the Coordinate Bench in favour of the assessee and against the revenue. Copy of the order is placed on record. Ld.AR of the assessee prayed that the similar view may be followed for the year under consideration.

10. On the other hand, Ld. DR fairly agreed that the issue is covered in favour of the assessee. However, he relied on the orders of the lower authorities.

11. Considered the rival submissions and material placed on record, we observe that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the immediately preceding assessment year i.e., A.Y. 2014-15 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

"8. We have heard the rival submissions and also perused the relevant findings given in the impugned order as well as material placed on record. As noted above, the Auditors have treated the expenditure incurred on International Bullion summit during the year under consideration as capital expenditure and have classified as intangible asset under the head 'non-current assets' in the balance sheet. However, the appellant association has claimed the deduction of entire amount of Rs. 3,80,43,067/- while computing the total income in the return of income. The appellant company was collecting yearly membership fees from the members and also earning revenue by providing melting, hall marking, assaying services which was mostly utilized by its members. Since for more than two decades the activities of the association were stand still, however from the financial year 2013-14, it started gaining momentum after an international event was organized called 'India International Bullion Summit' which was addressed by now Hon'ble Prime Minister of India who had addressed the industry and various peoples from different government agencies. The issue here is, whether the expenditure incurred on such a summit is revenue in nature or it is capital expenditure which has given rise to any enduring benefit or any kind of intangible asset. The plea of 'enduring benefit' has to be seen in the context of the economical realities of the business and whether the expenditure is part of the profit earning process to enable the assessee to carry on business then it has to be reckoned as revenue expenditure. Even if the expenditure has given some advantage of 'enduring benefit' in the business, it cannot be held as it is capital expenditure. Before us, it has been pointed out that in AY 2018-19, expenditure on account of organization summit have been allowed by the AO as revenue expenditure in the order passed u/s 143(3) and in AY 2015-16, the same stands allowed by the Ld. CIT(A). In AY 2016-17 and 2019-20, the same stands accepted, though no scrutiny assessment has been passed. Thus, it was contended that such expenditure not only is a regular expenditure, but also has been held as revenue expenditure. This fact also goes to show that it is a recurring expenditure incurred by the assessee and it cannot be held that the international summit

conducted in this year has given a long term asset or intangible asset giving 'enduring benefit' to the assessee or creating any profit making apparatus. Before us, the detail of expenditure incurred on summit has also been given which are as under:

Sr.No.	Particulars	Nature of Expenses	Amount
1	A-1 FLOWERS DECORATORS	FLOWERS DECORATION	82880
2	ADWORLD	BANNER EXP	48262
3	BRANDSOL MERCHANDISING LLP	LAPEL PIN, FLAG	447205
4	GLOBAL ADVERTISES	DISPLAY HORDING CHARG	489622
5	GAUTAM ADVERTISING	ADVERTISEMENT	1208926
6	GLOBAL ADVERTISES	ADVERTISEMENT	489622
7	IN DO MAX INTERNATSONA	ADVERTISEMENT	521289
8	KATALYST INERTAINMENT P LTD	FASHION SHOW	615398
9	KANCHANA DESIGN STUDIO	DRESS EXP	53000
10	D LAKHANI HIRES AND CATERS	HOTEL FOOD	9130629
11	MOONSTUCK ADVERTISING	PRINTING EXP	2817526
12	2 MINI MAX ADS PVT LTD	HORDINGSEXP	1421000
13	8 NORVICSON ADVERTISING	ADVERTISEMENT	77584
14	REPLIKATEINC	EVENT EXP	2981751
15	5 RASIK PUBLICITY CO	ADVERTISEMENT	1292773
16	ORION & DIGITAL PVT LTD	ADVERTISEMENT	56653
17	O'MARK PR & EVENT	ADVERTISEMENT	133091
18	RADICAL DESIGNS	EVENT EXP '	254390
19	SILVER EMPORIUM PVTTLTD	SILVER ARTICLE	811280
20	THE AWARD GALLERY	TROPHY EXP	625801
21	TALENT & BEYOND ENT PVT LTD	FASHION SHOW	1230000
22	RISING EVENTS	DINNER, SHOW SETUP	10172818
23	NETBIZ SYSTEMS	WEBSITE EXP	359000
24	MANALUAGTAP	FASHION SHOW	2723107
		Total	38043607

9. From the nature of the expenditure, it cannot be held that these are capital expenditure creating any intangible asset or any enduring benefit to the assessee. Even though Auditors may have classified it has to be a capital expenditure and capitalized as intangible asset, but it has not change the character of the expenditure incurred which is prima facie can be seen from details as incorporated above is revenue expenditure. Otherwise, it is a trite law that nature of income and expenses merely by entry in the books of account does not define the character of the income or allowability of expenditure. Thus, it cannot be held that aforesaid expenditure incurred on Indian International Bullion Summit is a capital expenditure. Accordingly, the deduction claimed by the assessee is allowed."

12. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2014-15, we dismiss the appeal filed by the revenue. Grounds raised by the revenue are dismissed.

13. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 28th February, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Mumbai / Dated 28.02.2024
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

BY ORDER

(Asstt. Registrar)
ITAT, Mum