

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.4553/Del/2018
Assessment Year: 2015-16

DCIT, Circle-2(1), Gurgaon	Vs.	Moonshine Eservices Pvt. Ltd., 375, Udyog Vihar, Phase-II, Gurgaon, Haryana
PAN :AAHCM8476G		
(Appellant)		(Respondent)

Assessee by	Sh. Abhishek Mathur, CA
Department by	Ms. Kamaljot Kaur, Sr. DR

Date of hearing	15.04.2024
Date of pronouncement	18.04.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This appeal by the Revenue arises out of order dated 13.04.2018 of learned Commissioner of Income Tax (Appeals)-1, Gurgaon, for the assessment year 2015-16.

2. The dispute in the present appeal is confined to deletion of part disallowance of marketing expenses made by the Assessing Officer.

3. Briefly the facts are, the assessee is a resident corporate entity. As stated by the Assessing Officer, the assessee maintains an online portal for printing solutions and personalized gifting. The assessee provides an array of classy and sophisticated personalized products, ranging right from corporate stationery to the products ideal for gifting like mobile and tech accessories, kitchenware, embellishing home décor and other fun stuff. For the assessment year under dispute, the assessee filed its return of income on 30.09.2015, declaring loss of Rs.15,35,71,690/-.

4. In course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed marketing expenses of Rs.12,68,26,082/-. After verifying the financial statement of the assessee, the Assessing Officer was of the view that compared to net profit declared in the earlier year, there is drastic fall in the impugned assessment year. He further observed that there is exponential increase in marketing expenses compared to the earlier year. He further observed that, though, sales have doubled but marketing expenses have increased more than five times. Thus, he ultimately concluded that the marketing expenses claimed by the assessee are not proportionate to sales.

Accordingly, he proceeded to allow 1/3rd of the marketing expenses claimed, while disallowing the remaining 2/3rd and treating the same as deferred revenue expenditure to be allowed in subsequent two assessment years. This resulted in addition of an amount of Rs.8,48,50,722/-. The assessee contested the aforesaid disallowance before learned first appellate authority.

5. Having considered the submissions of the assessee in the context of facts and materials on record, learned first appellate authority noticed that in subsequent two assessment years i.e. AYs 2016-17 and 2017-18, the assessee had incurred losses of Rs.5,49,07,442/- and Rs.1,14,62,236/- respectively. According to him, Assessing Officer's action in disallowing 2/3rd out of the marketing expenses would only result in decreasing loss in the impugned assessment year, whereas, increasing them in subsequent two assessment years. Thus, in any case of the matter, the addition made by the Assessing Officer in the impugned assessment year would be revenue neutral. In the aforesaid premises, he deleted the disallowance made by the Assessing Officer.

6. We have considered rival submissions and perused the materials on record. On analyzing the relevant facts, particularly, the observations of the Assessing Officer qua the disallowance made, it is quite evident that there is no dispute to the fact that the assessee had actually incurred marketing expenses of Rs.12,68,26,082/- in the year under consideration. In fact, the Assessing Officer has not only accepted the nature of expenses incurred by the assessee as revenue but has also accepted its genuineness. This is so because, he has allowed the entire expenditure incrementally i.e. 1/3rd in the impugned assessment year and the remaining 2/3rd in the subsequent two assessment years.

7. Therefore, the Assessing Officer had no doubt that expenditure claimed is allowable. The issue is, whether it is allowable in one year or has to be allowed as deferred revenue expenditure spread over three assessment years. The only reason, why the Assessing Officer has not allowed the entire expense in the impugned assessment year is, it is disproportionate to the sales. This, in our view, cannot be a valid reason for not allowing the entire expenditure in the impugned assessment year. When it

is accepted that the assessee had actually incurred the entire expenditure in the impugned assessment year, it has to be allowed in this assessment year only and cannot be deferred to subsequent assessment years. In case of Taparia Tools Limited Vs. JCIT, Civil Appeal Nos. 6366-6368 of 2003, Hon'ble Supreme Court has held that revenue expenditure incurred in a particular year is to be allowed in that year, unless, the assessee itself wants to spread the expenditure over a period of ensuing years. Undoubtedly, in the facts of the present appeal, the assessee has claimed the entire expenditure in the impugned assessment year. Therefore, the Assessing Officer unilaterally cannot restrict the claim to 1/3rd of the expenditure. That being the case, we do not find any infirmity in the decision of learned first appellate authority in deleting the disallowance made by the Assessing Officer.

8. However, at this stage, we must observe, while deleting the disallowance, the Assessing Officer is required to verify whether the remaining 2/3rd of the marketing expenses were allowed as deferred revenue expenditure in assessment years 2016-17 and 2017-18. In case, it is found to have been allowed, the same has

to be withdrawn. With the aforesaid observations, grounds are dismissed.

9. In the result, appeal is dismissed.

Order pronounced in the open court on 18th April, 2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 18th April, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi