

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

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.3358/Del/2017**  
**(ASSESSMENT YEAR 2012-13)**

**ITA No.2280/Del/2018**  
**(ASSESSMENT YEAR 2013-14)**

**ITA No.2536/Del/2018**  
**(ASSESSMENT YEAR 2014-15)**

The DCIT Circle 16(2) New Delhi	Vs.	M/s. Metronation Chennai Television Ltd. Daily Thanthi, M-118 Greater Kailash Part-1, New Delhi-110048 PAN:AAFCEM2626Q
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No.7181/Del/2019**  
**(ASSESSMENT YEAR 2016-17)**

The ACIT Circle 17(1) New Delhi	Vs.	M/s. Metronation Chennai Television Ltd. Daily Thanthi, M-118 Greater Kailash Part-1, New Delhi-110048 PAN:AAFCEM2626Q
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Arjun Raj, Advocate
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	28/05/2024
Date of Pronouncement	21/08/2024

**ORDER****PER S.RIFAUR RAHMAN, AM:**

1. A bunch of four appeals have been filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals)-39, New Delhi [“Ld. CIT(A)”, for short], dated 05/01/2017 for Assessment Years 2012-13, 2013-14, 2014-15 & 2016-17 respectively.

2. These four appeals are interconnected having common issues. All these appeals are heard together and disposed off by this common order.

3. Aggrieved with the above orders of Ld. CIT(A)-39, New Delhi, the Revenue has filed following common grounds of appeal:-

*“1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of marketing, distribution and business promotion expenditure of Fs. 2,42,70,000/- u/s 37(1) of the Income Tax Act 1961 (the Act) by ignoring finding of facts recorded by the Assessing Officer (the AO) that the expenditure was incurred to develop the market for the products of the assessee and was capital in nature?”*

*2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of marketing, distribution and business promotion expenditure of Rs. 2,42,70,000/- u/s 37(1) of the Act by ignoring findings of the fact recorded by the AO that the expenditure was incurred to generate marketing intangible i.e., an asset?”*

*3. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of marketing, distribution and business promotion expenditure of Rs. 2,42,70,000/- u/s 37(1) of the Act by ignoring a fact that the expenditure was incurred to generate/develop marketing intangible which was an asset under provision of clause (ii) of Explanation below sub-section (2) of section 92B read with section 32(1) of the Act?”*

*4. That the appellant craves leave to add, alter, amend or forgo any ground/(s) of raised above at the time of the hearing.”*

**4.** The grounds raised by the Revenue are common in all the appeals filed by the Revenue and the consolidatory issue raised by the Revenue are relating to disallowance of marketing, distribution and business promotion expenses. We observed that the Ld. CIT(A) has noticed that the majority of the expenditure claimed by the assessee under head marketing, distribution and promotion expenses are relating to the payment towards carriage fees. We are considering Assessment Year 2012-13 i.e., ITA 3358/Del/2017 as a lead case.

**5.** The brief facts of the case are, assessee is engaged in the business of providing finance for auto loans, sales finance, mortgage includes home loans and home equity and personal loans. The assessee filed its return of income on 31/10/2007 declaring an income of Rs.2,84,93,10,390/-, the same was processed u/s 143(1) of the Income Tax Act, 1961 ('the Act' for short). The case was selected for scrutiny and the Assessing officer proceeded to pass draft assessment order dated 23/12/2010 u/s 144C of the Act. Thereafter, assessee filed an appeal before Ld. CIT(A) against the final assessment order passed u/s 143(3) r.w. section 144C of the Act and the income was assessed at Rs.4,98,17,52,701/- with the disallowance of marketing distribution and promotion expenses by treating them as deferred Revenue expenditure. Before the Ld. CIT(A), the assessee has submitted that this fee is paid by the

broadcasters towards placement of particular channel on a particular frequency or bandwidth in a manner that would ensure more viewership for such channels. Carriage fees are paid for the carriage of channels or bouquet of channels of broadcaster on the distribution platform owned or operated by the distributor of the TV Channels. Thus, while cable operators charge channels for carrying their channels on one hand, the fees paid by a broadcaster to a distribution platform operator (DPO) for carrying the channels and deliver them to subscribers through cable TV, direct to home (DTH) and head-end in the sky (HITS), networks on the other, are also carriage fees.

Further, it was submitted that “....*carriage fees which is a sine qua non for the telecast business operations and does not amount to capital or deferred revenue expenditure and has to be paid at regular intervals in order to maintain the particulars frequency. i.e.. The channels are not creating permanent right over the particulars frequency unless and until the regular payments are paid to maintain the right and as such the channel operators are not creating fixed right over a particular frequency. As such it is a pure revenue expenditure and by way of no imagination it could be treated as capital expenditure or deferred revenue expenditure. It is also relevant to note that it is not a onetime payment to maintain a particular frequency for life and it is a regular monetary revenue expenditure to maintain a right over a frequency for a particular period for telecast right...*”

**6.** After considering the submissions of the assessee, the Ld. CIT(A) observed as under:-

*“5.2 From the impugned order, it is observed that the crux of the issue is characterization of the expenses claimed as revenue. The reason for treating such expenditure as capital is the resultant enduring benefit and the initial expenditure (at commencement of business) and further, the reason adduced for not allowing depreciation thereon is that intangibles eligible for depreciation does not include such expenditure. Reliance has been placed in the impugned order on the following decisions to mention the yardsticks for determination of an expenditure as capital or revenue-*

*Assam Bengal Cement Co. Ltd vs. CIT 27 ITR 34 (SC)  
Taparia Tools Ltd. vs. Jt. CIT 126 Taxman 544 (Bom)  
Dalmia Jain & Co. vs. CIT (1971) 81 ITR 754 (SC)  
Avery India Ltd. vs. CIT (1993) 199 ITR 754 (Cal)  
M.K. Bros. Pvt. Ltd. vs. CIT (1972) 86 ITR 38 (SC)  
Travancore Sugar and Chemicals Ltd. vs. CIT (1966) 62 ITR 566 (SC)  
F. Woodrofe and Co.Ltd. vs. CIT (1976) 102 ITR 0665 (Madras)  
CIT vs. J.K. Synthetics Ltd. (2009) 309 ITR 0371 (Delhi)*

*From the aforementioned judicial precedents, one thing becomes clear the dividing line between capital expenditure and revenue expenditure is thin and the decision would be on a case- to-case basis. Therefore, in my opinion, it is not only important to come to a conclusion after placing the facts of the case and examining them after applying the relevant yardstick to determine whether the expenditure incurred by an assessee would be capital or revenue and only thereafter be allowed as a deduction u/s 37(1) or otherwise. In the present case, it is clear that the expenditure on 'carriage fees' or advertisement / publicity will come under the ambit of revenue expenses there is no concept of deferred revenue expenditure under the Act only capital or revenue and moreover, deferred revenue expenses like that on advertisement is essentially revenue in nature. Secondly, the expenditure incurred by the appellant does not give it advantage over the life of the business even if it gives benefit over a period of time. Thirdly, without paying carriage fees, the appellant will not be able to increase its viewership, outreach and thereby its revenues. This is clearly evident from the submissions of the appellant at the appellate stage. Fourthly, nowhere in the impugned order has the genuineness of the expenditure questioned. Fifthly, in Assam Bengal Cement Co. Ltd vs. CIT 27 ITR 34 (SC) it was held that the payment of 'protection fee' was capital in as much as it was incurred for the acquisition of an asset or advantage of an enduring nature for the whole of the business and was no part of the working or operational expenses for carrying on the business of the assessee.*

5.3 In the case of ACIT vs. M/s Citi Financial Consumer Finance India Ltd. (ITAT Delhi), ITA No. 2848/Del/2012 & ITA No. 6305/Del/2012, AY 2007-08 & 2008-09 relied upon by the appellant it is observed that the deletion of addition made by the AO on account of advertisement and publicity expenses at the first appellate stage was confirmed by the jurisdictional HC (Delhi) in ITA No.4776/Del/2010 for AY 2006-07. It was mentioned therein, inter alia 13. Applying the aforesaid principle to the facts of this case, it clearly emerges that the expenditure on publicity and advertisement is to be treated as revenue in nature allowable fully in the year in which it was incurred. Concededly, there is no advantage which has accrued to the assessee in the capital field. The expenditure was incurred to facilitate the assessee's trading operations. No fixed capital was created by this expenditure. We may also add here that in the Income Tax Laws, there is no concept of deferred revenue expenditure. Once the assessee claims the deduction for whole amount of such expenditure, even in the year in which it is incurred, and the expenditure fulfills the test laid down u/s 37 of the Act, it has to be allowed. Only in exceptional cases, the nature mentioned in Madras Industrial Corporation (supra), the expenditure can be allowed to be spread over, that too, when the assessee chooses to do so."

5.4 From the above, it can be safely inferred that the facts of the present case is similar to that of the case relied upon by the appellant. The character of 'carriage fees' is similar to that of advertisement and publicity / promotion and accordingly, the disallowance of the appellant's claim of deduction of expenditure in this regard, in the impugned order, is deleted."

**7.** Aggrieved with the above order, the Revenue is in appeal before us.

**8.** At the hearing, the Ld. DR submitted as under:-

- The assessee filed return of income. The case was selected for scrutiny and necessary notices were issued u/s 143(2) and 142(1) of the IT Act, 1961.
- The company was incorporated on 04.10.2007. It is engaged in the business of telecasting of News and Current Affairs Television Channel.
- The company has launched a News and Current Affairs television channel "NDTV Hindu" on 16.05.2009.
- NDTV holds 51% of the share capital of the company and balance 49% is held by Kasturi & Sons Ltd.

**Year-wise summary of details like original return, returned income, etc.**

A. Y.	Date of original return	Returned Income (in Rs.)	Assessed Income (in Rs.) u/s 143(3) vide order dated	CIT (A) Order dated
2012-13	28.09.2012	(2,11,66,807)	Nil income, 25.02.2015	0501.2017
2013-14	30.09.2013	(27,80,92,092)	(17,69,93,906), 30.03.2016	31.01.2018
2014-15	29.11.2014	(46,13,67,155)	(21,65,51,000), 30.12.2016	07.02.2018
2016-17	15.10.2016	(24,81,60,199)	(6,87,88,803), 20.12.2018	07.06.2019

**Year-wise summary of additions made by A.O. vide order u/s 143(3) and decision given by CIT (A):**

A. Y./ Amount of addition (in Rs.)	Nature of addition made	Addition by A.O. and reasons	Findings/Decision of CIT(A)
2012-13 (Deptt. Appeal) Rs.2,42,70,000/-	Disallowance of Marketing, Distribution and business promotion expenditure u/s 37(1) ✓	<ul style="list-style-type: none"> <li>Revenue of the assessee is Rs.93,60,00,000/- against which it had debited Rs.2,42,70,000/- as marketing, distribution and promotion expenses in its P&amp;L Account. (Para 3,2, Pg 2)</li> <li>Since, these expenses were incurred in relation to the marketing and promotion to propagate the brand name in the market, nature of these expenses is capital. (Para 3.1, Pg 4)</li> <li>The expenses give the benefit to the assessee of enduring nature, hence, capital in nature. (Para 3.1, Pg 4)</li> <li><b>J</b> Case Laws cited: (Para 3.4, Pg 3) /&gt; Assam Bengal Cement Co. Ltd. Vs CIT (27 ITR 34) (SC) )* Taparia Tools Ltd. Vs Jt. CIT (126 Taxmann 544) (Bombay High Court)</li> <li>Amount of marketing, distribution &amp; promotion expenses incurred in the initial stage of business is considered capital in nature due to 2 reasons: (Para 3.6, Pg 3) f:</li> </ul>	<p>Pg 9-12 (para 5)</p> <ul style="list-style-type: none"> <li>Increasing viewership will definitely bring in revenue as well as aid in brand building and thus, expenses towards carriage fee, will come under ambit of marketing/advertisement. (Para 5.2, Pg 11)</li> <li><b>The expenditure is revenue in nature due to following reasons:</b> <ul style="list-style-type: none"> <li>&gt; No concept of deferred revenue expenditure under the act</li> <li>&gt; Deferred revenue expenses in the nature of advertisement is essentially revenue</li> <li>&gt; The expenditure does not give advantage over the life of business, even if it gives benefit over a period of time.</li> <li>&gt; Without paying carriage fee, the company will not be able to increase its viewership, outreach and thereby its revenues.</li> </ul> </li> <li><b>Addition is deleted. (Pg 12)</b> (Case Law cited ACIT Vs M/s Citi Financial Consumer Finance India Ltd. (HAT Delhi), ITA No. 2848/Del/2012 &amp; ITA No. 6305/Del/2012- upheld by Delhi HC in</li> </ul>
		<ul style="list-style-type: none"> <li>It has been incurred in the initial stage of commercialization of business</li> <li>It is going to give enduring and long-term benefits to assessee</li> <li>Nature of these expenses is such that it is not depreciable as not qualifying definition of intangible asset (Para 3.8, Pg</li> </ul>	
2013-14 (Deptt. Appeal) Rs.10,10,98,186/-		<ul style="list-style-type: none"> <li>Revenue of the assessee is Rs.2,91,53,480/- against which it had debited Rs.10,10,98,186/- as marketing, distribution and promotion expenses in its P&amp;L Account. (Para 3.2, Pg 4)</li> <li>Other facts and reasons same as above (Pg 7 to 12)</li> </ul>	<p>(Para 5.4, Pg 10)</p> <ul style="list-style-type: none"> <li><b>Addition is deleted as character of carriage fees is similar to advertisement and publicity/promotion.</b> (Relied on decision of Id. CIT (A)-39 in A. Y. 2012- 13 as facts are similar, following the principle of consistency and judicial precedence.)</li> </ul>

2014-15 (Deptt. Appeal) Rs.24,48,14,403/-	Disallowance of Marketing, Distribution and business promotion expenditure u/s 37(1)	<ul style="list-style-type: none"> <li>• Revenue of the assessee is Rs.10,77,07,440/- against which it had debited Rs.24,48,14,403/- as carriage fee (u/h other expenses) in its P&amp;L Account. (Para 3.6, Pg 4)</li> <li>• Carriage fee is to ensure that a particular channel reaches the highest subscriber base and thus determines the distribution and has a direct and deleterious bearing on consumers choice of channels. (Para 3.3, Pg 3)</li> <li>• Carriage fee is not uniform and varies based on the genre and area of operation (Para 3.4, Pg 4)</li> <li>• Carriage fee is not just a technical component but subsumes business promotion, marketing and distribution aspect which is embedded in it. (Para 3.5, Pg 4)</li> <li>• Same case laws relied upon as in previous years</li> <li>• The carriage fee incurred in the initial stage of business is considered capital in nature as it is going to give enduring and longterm benefits to the assessee (Para 3.10, Pg 7)</li> <li>• The nature of these expenses is such that it is not depreciable (as not falling under specified intangibles as per IT Act) (Para 3.12, Pg 10)</li> </ul>	(Para 5.4, Pg 10) • <b>Addition is deleted as character of carriage fees is similar to advertisement and publicity/promotion</b> (Relied on decision of Id. CIT (A)-39 in A.Y. 2012- 13 as facts are similar, following the principle of consistency and judicial precedence.)
2014-15 (No appeal) Rs. 1,757/-	Addition on account of 26AS mismatch	Addition o/a difference between books and receipts as per 26AS of Rs.1,757/- as assessee failed to justify the difference. (Para 4, Pg 10)	Addition upheld as assessee shown receipts in books after TDS (Para 4.6, Pg 11)
2016-17 (Deptt. Appeal) Rs. 17,93,71,396/-	Disallowance of Marketing, Distribution and business promotion expenditure u/s 37(1)	<ul style="list-style-type: none"> <li>• Revenue of the assessee is Rs.23,12,13,840/- against which it had debited Rs. 17,93,71,396/- as carriage fee u/h other expenses in its P&amp;L Account. (Para 3.6, Pg 3)</li> <li>• Other facts and reasons same as in A.Y. 2014-15 (Pg 6 to 9)</li> </ul>	(Para 4.4, Pg 15) • <b>Addition is deleted as character of carriage fees is similar to advertisement and publicity/promotion</b> (Relied on decision of Id. CIT (A)-39 in A.Y. 2012- 13 and his own decision in A.Y. 2014-15 as facts are similar, following the principle of consistency and judicial precedence.)

Further he relied on the decision of Hon'ble Supreme Court in the case of *CIT vs. Bharti Hexacom Ltd. reported in 458 ITR 593 (SC)*.

9. On the other hand, the Ld. AR submitted that the nature of the expenditure incurred by the assessee is carriage fees paid to direct to home (DTH) Cable operators. He submitted that the assessee paid the carriage fees per annum basis. In this regard, he

brought to our notice sample agreements entered by the assessee with M/s Kal Cables Pvt. Ltd., M/s Bharat Business Channel Ltd., M/s Reliance BIG TV Ltd. & M/s Tata Sky Ltd. He brought our notice page 89 of the agreement entered with Kal Cables Pvt. Ltd. He brought to our notice page 93 of the PB wherein assessee has renewed the agreement entered with Kal Cables for a further period of one year. He submitted for carriage fees are paid by the assessee on a renewal basis. He submitted that assessee paid the carriage fees for a particular period of time as and when the period is over, in this case per annum, the agreement has to be renewed otherwise the services will be terminated. Further, he brought to our notice page 85 of the PB to demonstrate actual payment of carriage fees paid to Kal Cables, Sun Direct and Tata Sky. To the extent of Rs. 2,42,66,221/-the expenditure claimed by the assessee in AY 2012-13. He submitted that the assessee does not get any enduring benefit by utilizing the services of DTH beyond the period of uses. He objected to the submissions of the Ld. DR that the payment of carriage fees leads to enduring benefit to the assessee in the subsequent period. Finally, he submitted that he relies on detailed findings of Ld. CIT(A).

**10.** Considered the rival submissions and material placed on record, we observed that assessee has incurred carriage fees to promote and advertise by entering agreement with DTH providers like Kal Cables, Sun Direct and Tata Sky. On verification of the services agreement entered by the assessee with DTH providers, we

observed that the period, of services engaged by the assessee was for a particular period in this case on the basis of annual and on renewal bases. We observed that assessee renewed most of the services agreement annually and the services are restricted to the period engaged by the assessee. We observed that the services provided by the DTH are for utilization of information of the assessee to retransmit/redistribute through their cable services in digital mode in the territory of the Chennai Metropolitan Area where the assessee is functioning. After careful consideration, we observed that the fees paid by the assessee is only towards uses of the carriage provided by the DTH providers, therefore, the assessee does not get any enduring benefit by such utilization. After careful consideration, we are inclined to agree with the findings of the Ld. CIT(A).

**11.** Coming to the submissions of the Ld. DR, the Ld. DR relied on the Bharati Hexacom Ltd. (supra), we observed that in the above case, the Hon'ble Supreme Court as evaluated the license fees paid by the assessee for a period of 12 years which was amortized for a period of 12 years. The Hon'ble Supreme Court held that the payment of entry fee as well as variable annual license fee paid by the assessee to DoT under policy of 1999 would be cable in nature and was to be amortized in accordance with section 35ABB. We observed that the facts in this case are distinguishable to the facts in the present case where assessee has utilized the services of DTH by paying the users charges annually, therefore, there is no concept

of enduring benefit existed in the present case. Accordingly, grounds raised by the Revenue are dismissed.

**12.** In the facts discussed above in Assessment Year 2012-13 are *mututis mutandis* in other Assessment Years 2013-14, 2014-15 & 2016-17 and the findings of the case in Assessment Year 2012-13 are applicable *mutatis mutandis* for other Assessment Years. Accordingly, other appeals filed by the Revenue are also dismissed.

**13.** In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 21<sup>st</sup> August, 2024.

Sd/-

Sd/-

**(MS. MADHUMITA ROY)**  
**JUDICIAL MEMBER**

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 21/08/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

