

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.3875/दिल्ली/2023(नि.व. 2020-21)
ITA No.3875/DEL/2023 (A.Y.2020-21)

Dewan Jewellers,
J 25, 3rd Floor, Veer Savarkar Marg,
Lajpat Nagar II, New Delhi 110024

PAN: AAQFD-2920-C

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
Circle 52(1), Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ankit Malik, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by : Shri Sanjay Tripathi, Sr. DR

सुनवाई की तिथि/ Date of hearing : 19/09/2024

घोषणा की तिथि/ Date of pronouncement: : 18/12/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 27.09.2023, for assessment year 2020-21.

2. The solitary issue raised by the assessee in appeal is against the findings of the CIT(A) in treating expenditure incurred towards show room fitting expenses Rs.54,62,703/- as capital expenditure.

3. The appeal is time barred by 29 days. The assessee has filed an application seeking condonation of delay in filing of appeal. The Revenue has not raised any

serious objection in condoning the delay. After perusing the said application, I am of considered view that the delay in filing of appeal is not intentional but was for the reasons stated therein which appears to be bonafide. The delay of 29 days in filing of appeal is condoned and appeal is admitted to be heard on merits.

3. The facts of the case, in brief, as emanating from records are, the assessee is engaged in the business of managing and operating a retail store, named 'Tanishq,' under the flagship of M/s. Titan Company Ltd. (hereinafter referred to as 'the Company'). The assessee incurred expenditure towards showroom fittings aggregating to Rs. 54,62,703/- and debited the same to Profit and Loss account. During assessment proceedings the Assessing Officer (AO) held the expenditure as capital in nature and allowed depreciation on the same. Aggrieved by the assessment order dated 14.09.2022 passed u/s. 143(3) r.w.s 144B of the Income Tax Act, 1961(hereinafter referred to as 'the Act'), the assessee filed appeal before the CIT(A). The First Appellate Authority rejected assessee's contention and upheld the assessment order. Hence, present appeal by the assessee.

4. Shri Ankit Malik, appearing on behalf of the assessee submits that the assessee entered into management agency agreement with Titan Company Ltd. for managing and operating jewellery store under the brand name "Tansihq". As per the agreement the assessee was required to bear interior decoration of the storeroom including structural modifications, installation of furniture fittings etc. The copy of management agency agreement is at page 11 to 33 of the paper book. The assessee claimed expenditure on fixture and fittings including interior designing as Revenue and debited the same to P&L Account. The AO re-characterize the nature of expenditure as capital and allowed depreciation on the

same. The Id. AR submitted that the AO and the CIT(A) have failed to appreciate the terms and conditions of the agreement. There is a termination clause in the agreement, according to which the Company has right to terminate the agreement in case conditions are violated; the assessee is under obligation to change showroom interior designs to the satisfaction of the Company. He further submitted that the fittings and fixtures were made in the rented premises; therefore, the assessee did not intend to derive any enduring benefit or create any asset. Hence, the assessee has rightly claimed it as Revenue expenditure. To support his contentions, the Id. AR placed reliance on the decision in the case of *PCIT vs. Joy Alukkas (India) Pvt. Ltd.* 452 ITR 271 (SC).

5. Per contra, Shri Sanjay Tripathi representing the department vehemently defended the impugned order. The Id. DR submits that the assessee has entered into a lease agreement with the owner of the premises for a period of 9 years. Thus, the assessee would derive long term enduring benefit from the expenditure incurred on fittings and fixtures. The assessee has incurred expenditure once for all and has created an asset of enduring nature. Hence, the AO and CIT(A) have rightly rejected assessee's claim of expenditure as revenue and have held it to be capital expenditure. The Id. DR prayed upholding the impugned order and dismissing appeal of the assessee.

6. Both sides heard, orders of the authorities below examined. The short issue in this appeal is determination of nature of expenditure on fixtures and fittings. In so far as quantum of expenditure is concerned there is no dispute. The assessee has claimed Rs.54,62,703/- expenditure on fixtures and fittings of the showroom as revenue, whereas, the AO and the CIT(A) have held it to on capital account. A

perusal of Management Agency Agreement dated 15.10.2019 entered into by assessee with Company for operating and managing jewellery showroom under the brand name "Tansihq" would show that, the assessee is required to bear and carry out interior decoration of the showroom including structural modifications and installing furniture, fittings etc. at its own cost. The interior designs furniture and fitting are to be carried out by the assessee to the satisfaction of Company and interior design concept schematic drawings and specifications provided by the company from time to time. From the reading of terms and conditions of the Management Agency Agreement it is evident that the interior designs furnishing and fixtures carried out by the assessee were not according to assessee's own choice but were as per the designs and requirement of the Company. The assessee was under obligation to change the fittings from time to time as per the requirement of the Company. In any case all these fittings, fixtures and furnishing were carried out in the rented premises. For setting up of aforesaid jewellery outlet, the assessee has entered into a lease deed on 30.09.2019 in respect of commercial premises on Ground Floor & Basement Floor bearing no. A-II/79 A & B, Lajpat Nagar-II, New Delhi 110024, admeasuring about 3200 sq. ft. for a period of 9 years. Therefore, no new asset was created by the assessee out of which, it could have enjoyed enduring benefit. I am of considered view that the authorities below have failed to read the covenants of Management Agency Agreement regarding fixtures, fittings and interior designs etc. The assessee intended to carry business in a rented premises for which lease deed was executed for a period of 9 years. The duration of lease period is not long enough to give assessee enduring benefit coupled with the fact that the assessee was requested to change fixtures, fittings, furniture etc. from time to time as per requirement of the Company, no new assest

had come into existence so as to bring enduring benefit. Therefore, in my considered view the claim of assessee on fixtures and fittings of showroom as revenue expenditure deserves to be accepted.

7. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Wednesday the 18th day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 18/12/2024

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI