

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”, NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

	I.T.A. No. 2020/DEL/2024	
	A.Y.: 2018-19	
DY. COMMISSIONER OF INCOME TAX, ROOM NO. 316A, C.R. BUILDING, I.P. ESTATE, NEW DELHI – 2	VS	JADE E-SERVICES PRIVATE LIMITED, A-41, 2 ND FLOOR, MOHAN COOPERATIVE INDUSTRIAL ESTATE, MAIN MATHURA ROAD, PUL PRAHLADPUR, SOUTH EAST DELHI, DELHI – 34 (PAN: AACCCJ6683M)
(ASSESSEE)		(RESPONDENT)

Assessee by : Shri Udit Jain, Adv. & Shri Arihant Tater, Adv.
Department by : Shri Dayainder Singh Sidhu, CIT(DR)
Date of hearing : **26.03.2025**
Date of pronouncement : **09.04.2025**

ORDER

PER SHAMIM YAHYA, AM :

This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)/NFAC, Delhi dated 12.03.2024 pertaining to assessment year 2018-19 on the following ground:-

“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 18,34,46,739/- on account of disallowance of expenses on sale promotion including publicity, photoshoot expenses and Information and Technology Cost (ERP Maintenance).”

2. Brief facts of the case are that assessee is engaged in the wholesale B2B business of selling fashion and lifestyle goods of various brands. Assessee filed its return of income for AY 2018-19 on 29.11.2018 declaring total income at Rs. NIL after setting off of Income from LTCG on Slump Sale and Income from Other sources with the Business Loss and brought forward unabsorbed depreciation and book profit has been calculated at(Rs. 860806974/-). The company has incurred loss under the heads Profits and Gains from Business and Profession. The case of the assessee was selected for scrutiny under CASS for verification of various issues and notice u/s. 143(2) dated 22.9.2019 was duly issued and served upon the assessee. During assessment proceedings notices u/s. 142(91) of the Act issued by AO, in response, the assessee filed written submission and finally AO passed order u/s.143(3) r.w.s. 144B of the Act wherein additions of Rs. 18,34,46,839/- were made. AO had treated 50% of the expenditure on account of sales promotion expenses including publicity, photoshoot expenses and information technology costs (website and ERP maintenance) expenses to the tune of Rs. 18,34,46,839/- (i.e. half of Rs. 36,68,93,477/-) as capital in nature being enduring benefit of assessee and disallowed as 50% of revenue expenditure claimed by the assessee and treated as capital expenditure.

3. Upon assessee's appeal, Ld. CIT(A) noted the submission of the assessee and held as under:-

“Whereas appellant submitted detailed description of each of the expense i.e. (i). Sales promotion including publicity include advertisement expenses categorized in two forms pertained to the advertisement of the portal itself, advertisement of the products sold on the portal, marketing campaigns etc.: (A) Online marketing: Online marketing expenses includes costs incurred for advertising the platform Jabong.com on various portals expenditure towards advertising television channels

which is accounted under the head brand building and advertising expenses. It includes search engine optimization, pay per click advertising, social media advertising (Facebook, Twitter etc.), SMS marketing, email or newsletter marketing, online classified marketing, etc., (B) Offline marketing expenses: Offline advertising expenses pertained to advertising on conventional models such as hoarding advertisements, campaigns etc. Further appellant submitted that (ii). Production expenses incurred towards photo-shoot of products and payments to models for the photo-shoots that were displayed on the web portal. Such product photos capture the attention of the customer. It ensures that the product matches the expectations of the customer, whether they are looking for specific colors, sizes, styles or other qualities that make or break their opinion of the product. Regarding the (iii) Information technology Costs appellant submitted that it includes charges paid for recurring services in relation to enterprise resource platform, annual license cost, server hosting charges, portal related services like hosting, performance testing and improvement, updating charges, cost paid to use analytical tools, technical consultancy, hiring of technical staff for regular IT requirements etc.

The Assessing Officer has called all details but did not mention any particular item or list of items qualified as capital asset and not to be treated as revenue expenditure but AO treated 50% of the expense as capital expense i.e. made adhoc addition by treating 50% of expenses as capital expenditure.

The disallowance of revenue expenditure and treating as capital in nature has to be made of certain basis.

Further, the appellant emphasis that these are revenue expense and they had no enduring benefits. As per appellant these expenses were

in nature of revenue expenses being recurring in nature and also provided rational as mentioned in above para. These expenses are day to day running of business of the appellant.

The appellant has relied various case laws including jurisdictional Tribunal and High Court in its favour. In a recent judgement, High Court of Gujarat in the case of Pr. CIT Vs. Bajaj Herbals (P.) Ltd.; 148 taxmann.com 147 (2023) held that:

“We have extensively heard the learned advocates on both the sides, where emphasis on the part of the assessee had been that these are the revenue expense and they had no enduring benefits. The CIT (Appeals) found that these expenses were in the nature of the revenue expenses being recurring in nature and the details had been verified also. It is also given appealing rational that web-designing and development expenses are for the purpose of day to day running of the business and even if, it is to be termed as enduring benefit, the benefit cannot be said to accrue to the assessee in the capital field. It is quite logical that any time the website is developed, it is not a static website, it constantly would need updating otherwise for any business the same would become obsolete, therefore, any expenditure which would be made on the same should be allowed as the revenue expenditure. Likewise, the sales promotion expenses on the ground of the same being capital in nature have not been sustained by the CIT(Appeals) and thereafter by the ITAT by holding that they are to be frequently incurred for various products considering the nature of the business of manufacturing of the drugs and cosmetics. The survey for the launch of new products or even for existing products are part of marketing and sales.

Considering the facts of the grounds of appeal and case laws cited by the appellant, I found that AO has made adhoc disallowance of 50% of revenue expenditure and treated same as capital in nature is not correct and AO is directed to delete the addition of Rs. 18,34,46,739/- made in assessment order. Therefore, the ground number 2 of the appeal is allowed.”

4. Against the above order, Revenue is in appeal before us.

5. We have heard both the parties and perused the records. Ld. DR relied upon the order of the AO. Per contra, Ld. Counsel for the assessee supported the order of the Id. CIT(A) and submitted that the issue in dispute is squarely covered by the case laws referred by the Id. CIT(A) and also covered by the decision of the ITAT, Delhi dated 29.08.2022 in the case of DCIT vs. Magic Bricks Reality Services Limited 2022 (8) TMI 1288 – ITAT Delhi. We have carefully considered the submissions, we find that Ld. CIT(A) has taken a correct view in the matter, the items involved cannot be said to be enduring benefits being capital in nature. The case laws referred by the Id. CIT(A) is also germane and supports the case of the assessee. Furthermore, the ITAT, Delhi in the case of DCIT vs. Magic Bricks Reality Services Limited (Supra) has held as under:-

“Hon'ble Supreme Court in the case of Empire Jute Company [1980 (5) TMI 1 - SUPREME COURT] deleted the disallowance holding that the expenses incurred by the assessee towards advertisement and business promotion are not in the nature of capital.

We almost identical issue came up for consideration before the co-ordinate bench of the Tribunal in the case of Addl. CIT Vs. M/s. Jasper Infotech Pvt. Ltd. [2021 (12) TMI 443 - ITAT DELHI] wherein the co-ordinate bench considered whether the CIT (Appeals) is right in deleting the disallowance of 50% of expenses incurred on advertisement, publicity and business promotion

incurred on brand building of e-commerce portal 'Snapdeal' considering the same as revenue expenditure and not capital expenditure.

We hold that the Id. CIT (Appeals) had rightly held that the expenditure incurred by the assessee on advertisement and business promotion are in the nature of revenue and not capital expenditure. Ground raised by the Revenue is rejected.”

6. In the background of the aforesaid discussions and respectfully following the aforesaid precedent, we do not find any infirmity in the order of the Ld. CIT(A) and accordingly, we uphold the same.

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 09/04/2025.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

SRBHATNAGAR

Copy forwarded to: -

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

Assistant Registrar