

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI  
BEFORE BEENA PILLAI JUDICIAL MEMBER  
AND  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER  
ITA No.4231/M/2023  
Assessment Year: 2011-12**

<b>Assistant Commissioner of Income Tax-3-1-1, Room No.607, 6<sup>th</sup> Floor, Aayakar Bhawan, M. K. Road, Churchgate, Maharashtra- 400020.</b>	<b>Vs.</b>	<b>Ms. Samsonite South Asia Pvt. Ltd. 402, Ackruti Star Opposite Ackruti Center Point Building, MIDC, Andheri East.-400093. <b>PAN:AAACS8598L</b></b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

**Assessee by** : Dr. K. Shivaram Sr. Advocate & Shashi  
Bekal- Advocate

**Revenue by** : Dr, Kishore Dhule – CIT D.R.

**Date of Hearing** : 21.10.2024

**Date of Pronouncement** : 30.10.2024

**ORDER**

**Per Beena Pillai, JM:**

Present appeal is filed by the revenue arises out of the order dated 27/09/2023 passed by Ld.CIT(A)/NFAC for Assessment Year 2011-12 on following grounds of appeal:



- A. *Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) is correct in allowing the entire amount of Rs.10,66,27,140/- (mentioned erroneously in CIT(A)'s order as Rs.38,41,69,880/-) incurred by the assessee for building of 'Samsonite' brand without appreciating the fact that these expenses were incurred towards creating intangible rights in its favour which are capable of giving enduring benefits to the assessee company and hence are assignable over a number of years?*
- B. *Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) is right in treating the capital expenses incurred by the assessee for creating intangible rights in its favour as deferred revenue expenses without appreciating the fact that a number of invoices of such expenses mentioned the nature as 'cost of branding'?*
- C. *Whether on the facts and in the circumstances of the case and in the law, the Ld.CIT(A) is right in treating the expenses incurred and debited by the assessee under the head 'Advertisement and Sales promotion expenses' as revenue expense without appreciating the fact that these expenses facilitate increased sales over a period of time thereby ensuring enduring benefit to the assessee?"*

**Brief facts of the case are as under:**

2. The assessee, is a company incorporated under the Companies Act, 1956, and is engaged in the business of manufacturing, marketing and distribution of moulded luggage (hard luggage) and travel accessories as well as importing and distribution of soft luggage of the "Samsonite" brand under an agreement with Samsonite Corporation. It is submitted that two major share holder groups Samsonite Group holding 60% and Tinwala Group holding 40% of the total Capital.

2.1. The assessee filed its return of Income for AY 2011-12 on 30/11/2011 declaring total Income at Rs.50,26,79,310/- under the



normal provisions of the Act. Subsequently, the assessee's case was selected for scrutiny.

2.2. The case was selected for scrutiny and notice u/s. 143(2) of the Act was issued alongwith notice u/s. 143(3) of the Act. In response to statutory notices, the assessee filed requisite details as clause for. The Ld. AO noted that assessee had entered into international transaction with its associated enterprise and accordingly a reference was made u/s. 92CA to the transfer pricing office (hereinafter referred as Ld. TPO).

2.3. Upon receipt of the reference, the Ld. TPO called for the economic details of the transaction entered into between the assessee and its AE. The assessee was called upon to furnish the details of the transaction in form 3CEB. On perusal of the details furnished by the assessee, the Ld. TPO analysed the international transaction and came to the conclusion that the same was an arm's length. The Ld. TPO vide order dated 31/10/2014 passed the order u/s. 92CA(3) accepting the arm's length price of the transaction reported by the assessee.

2.4. Upon receipt of the transfer pricing order, the Ld. AO, thereafter, issued notice in respect of various corporate taxes issues.

2.4.1. During the course of assessment proceedings, the assessee was called upon to produce details/documents/explanations



regarding the advertisement and sales promotion expenses incurred by the assessee. It is submitted that, for purpose of its business, the assessee established an all India network of distributors and dealers. It was submitted that it is assessee's responsibility to provide the distributors and dealers with merchandise such as sign boards, illuminated name boards, banners, posters, brochures and other promotional material. It was submitted that the assessee is also required to advertise the appointments of new dealer/distributor, promotional schemes, new product launch and such similar events.

2.4.2. The assessee submitted that under a Royalty Agreement with "Samsonite Corporation", the assessee was licensed to manufacture market and distribute Samsonite brand of luggage and travel accessories in India and to Samsonite Group companies worldwide. The assessee submitted that as per the terms of Royalty Agreement (clause 7.1.), the assessee is required to promote the products in which the assessee is dealing. It was submitted that, the advertising cost incurred by the assessee was claimed as business expenditure, as it was incurred exclusively for the purpose of its business.

2.4.3. It is submitted that the break-up of advertisement expenses incurred by the assessee during the year is as follows:

<b>Particulars</b>	<b>AY 2011-12 Amount (Rs.)</b>	<b>AY 2010-11 Amount (Rs.)</b>
Advertisement expenses	261,065,043	178,095,976



CSD Service Charges	70,033,111	38,087,312
CSD Travelling & Sales Promotion	23,942,126	19,369,348
Sales Promotion Expenses	29,129,600	20,899,040
<b>Total</b>	<b>384,169,880</b>	<b>256,451,676</b>

2.4.4 The Ld. AO after considering the submission disallowed advertising and sales promotion expenses of Rs.10,66,27,140/-. On receipt of the draft assessment order, the assessee indicated the Ld. AO to file the appeal before the Ld. CIT(A). Accordingly, the Ld. AO passed the final assessment order making disallowance of the advertisement and sales promotion expenses along with the other disallowances made considered therein.

Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), assessee filed order passed by this *Tribunal* in assessee's own case for assessment year 2012-13 vide order dated 01/09/2017, wherein the identical issues was considered on similar facts and circumstances. The Ld. CIT(A), following the order of this *Tribunal* deleted the additions made by the Ld. AO.

Aggrieved by the order of the Ld. CIT(A), revenue filed appeal before this *Tribunal*.



4. The issue alleged by the revenue is on deletion of advertisement and sales promotion expenses by Ld. CIT(A)

4.1. The Ld. D.R. placed reliance on the observations of the Ld. AO in support of the argument that, the expenditure incurred by the assessee towards sales promotion and advertising expenses cannot be considered as revenue expenses. He submitted that, these expenses were incurred by the assessee to facilitate increased sales of the product over a period of time. Thereby, ensuring an enduring benefit of the assessee. The Ld. DR submitted that, these expenses deserve to be disallowed.

4.2. On the contrary, the Ld.AR placed reliance on the decisions of the coordinate bench of this *Tribunal* in assessee's own case for subsequent assessment year, the details of which are as under:-

*"i. Samsonite South Asia Private Limited vs. Dy. CIT, Income Tax Act No.1934/Mum/2017 dated September 01, 2017 for AY 2012-13*

*ii. Samsonite South Asia Private Limited vs. ACIT ITA No.6850/Mum/2017 dated August 31, 2018 for AY 2013-14*

*iii. DCIT vs. Samsonite South Asia Private Limited, ITA No.3264/Mum/2018 dated September 30, 2019 for AY 2014-15"*

4.3. The Ld. AR also placed reliance on the decision of the *Hon'ble Bombay High Court* in case of *CIT vs. Asian Paints (India) Ltd.* reported in [2016] 75 taxmann.com 152, wherein, identical expenditure incurred by the Asian Paints was allowed as revenue expenditure. He, thus, vehemently supported the orders passed by the Ld. CIT(A).



We have perused submissions advanced by both sides based on record placed before us.

5. It is noted that similar issue has been considered by coordinate bench of this tribunal on identical facts and circumstances in assessee's own case for assessment year 2012-13, 2013-14, 2014-15. Facts of the orders have been relied upon by the Ld.AR herein above. We note that the Ld.DR could not contrast the factual similarity between the assessment year under consideration viz-a-viz for subsequent assessment year which was the matter of appeal before this tribunal. On perusal of the order passed by this tribunal for assessment year 2014-15, we note that this tribunal confirmed the view of the Ld. CIT(A) by observing as under:-

*'We have deliberated at length on the issue involved in the present appeal in the backdrop of the facts discernible from the record and the contentions advanced by the authorised representatives for both the parties. In our considered view, the issue involved in the present appeal is squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2012-13 in ITA No. 1934/Mum /2017, dated 01.09.2017. In the aforesaid case, it was observed by the Tribunal, that the 'advertisement and sales promotion expenses' incurred by the assessee were allowable as a revenue expenditure. The Tribunal while concluding as hereinabove, had observed as under:-*

*"24. Up on careful consideration, we note that assessee has incurred expenditure on advertisement and sales promotion. The assessing officer & DRP have held on an adhoc basis that a certain portion out of the above is aimed at brand building and the same is to be held as capital expenditure and the assessee can be granted depreciation there upon. When this is considered in light of the fact that the brand doesn't belong to the assessee and it is not the case of the revenue that assessee has incurred expenditure aimed at benefiting the associated enterprise this addition is clearly not sustainable. When the brand doesn't belong to the assessee there is no question of incurring expenditure over building of*



brand and assessee creating any intangible rights assignable over a number of years.

25. Moreover, it is implicit in the order of the revenue that these are deferred revenue expenditure for the purpose of the business of the assessee as they are allowing depreciation thereon. Further, there is no question of disallowance of the same as it is also settled law that in taxation laws there is no concept of deferred revenue expenditure. The case laws referred by the learned Counsel of the assessee duly indicate that expenditure incurred by the assessee company to maintain its corporate image which resulted in increased sales of the product is to be allowed as revenue expenditure. We find that these case laws are duly applicable to the facts of the present case.

26. Hence in the background of aforesaid discussion and precedents, we set aside the orders of the authorities below which ITA No. 1934/Mum/2017. M/s. Samsonite South Asia Pvt. Ltd. 29 allocated ad hoc percentage out of advertisement and sales promotion as depreciable capital expenditure. We hold that the entire expenditure is a revenue expenditure allowable as such.

27. In the result, this appeal filed by the assessee stands allowed.”

As the facts and the issue involved in the present appeal remains the same, therefore, we respectfully follow the aforesaid order of the Tribunal in the assessee's own case for A.Y. 2012-13. Accordingly, finding no infirmity in the order of the CIT(A), we uphold the same. Resultantly, finding no merit in the appeal of the revenue, the same is dismissed.”

5.1. Similar view is taken by coordinate bench of this Tribunal in case of assessee for assessment year 2013-14 and 2012-13 that has been relied herein above.

5.2. On perusal of the decision of the Hon'ble Bombay High Court, question of law on identical issue was subject matter of consideration. Hon'ble High Court in the case of Asian Paint (India) Ltd. (supra) observed and held as under:-

“(e). We find that an identical issue had arisen before this Court in case of CIT v. Jeffrey Manners & Co. Ltd. [2009] 315 ITR 134/180 Taxman 87 (Bom.), wherein the Court was considering a question whether the



*expenses incurred by the Respondent-Assessee therein for making advertisement films is to be treated as a capital or revenue expenditure. This Court opined that the correct test to be applied in respect of expenditure incurred for making advertisement films was that when the same was incurred in respect of an ongoing business of the Assessee, it is Revenue. On the other hand, when the expenditure is incurred in respect of a brand which is to be used in a business which is yet to be commenced, it is capital expenditure. In this case also, the expenditure on corporate advertisement films is in respect of ongoing business. The expenditure for advertisement of a brand or corporate name of an existing ongoing business is in the nature of maintaining the brand and/or corporate image and it is not for creation of a brand. Further, the test of enduring benefit urged by the Revenue was considered by the Apex Court in Empire Jute Co. Ltd. v. CIT [1980] 124 ITR Taxman 69 to hold that it is not a conclusive test in all cases so that such expenditure is always on capital account. The Court observed that what is to be examined is the nature of advantage obtained in the commercial sense by incurring the expenditure. If the expenditure consists of merely facilitating the assessee to carry on business more profitably leaving the fixed capital untouched, it would be on revenue account. The entire expenditure, the Court observed, has to be looked at from a businessman's point of view. In the present facts, the expenditure on account of corporate advertisement is to essentially maintain the corporate image and not create a corporate image. Further, the impugned order holds on facts that the corporate advertisement expenditure facilitates the business having a direct impact on sales and profitability of the Respondent-Assessee.*

*(f) In the above circumstances, the view taken by the impugned order that corporate advertisement enhances the business of the Assessee resulting in increased sales of its product in Revenue field, is a possible view, on the present facts. Consequently, the question as raised does not give rise to any substantial question of law. Thus, not entertained.”*

5.3. Under such circumstances, we do not find any confirmity in the view taken by Ld. CIT(A) and the same observed to be upheld. The Ld. DR has also placed nothing on record in order to distinguish the order under consideration with that all the subsequent assessment orders factually.



**Accordingly the grounds raised by the assessee stands dismissed.**

**In the result the appeal filed by the assessee stands dismissed.**

Order pronounced in the open court on 30-10-2024.

**Sd/-  
(PRABHASH SHANKAR)  
Accountant Member**

**Sd/-  
(BEENA PILLAI)  
Judicial Member**

Mumbai, Dated: 30.10.2024.

*Snehal C. Ayare, Stenographer/ Dragon*

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)

**ITAT, Mumbai**