

IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH MUMBAI

BEFORE: SHRI SAKTIJIT DEY, VICE PRESIDENT

&

SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No. 4964/MUM/2025(A.Y: 2018-19)

Mahindra & Mahindra Limited (as successor to Mahindra Two Wheelers Limited which in turn is successor to Mahindra Trucks and Buses Limited Compnay Mahindra Tower, Second Floor, Corporate Taxation Department, P.K. Kurne Chowk, Worli, Mumbai - 400018	Vs.	Assessment Unit, Income Tax Department, National Faceless Assessment Centre Local Jurisdictional Assessing Officer- Deputy Commissioner of Income tax, Circle 2(2)(1), Mumbai. Room No. 545, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.
PAN: AAACM3025E of Mahindra & Mahindra Limited AAACM7863L of erstwhile Mahindra Trucks And Buses Limited		
(Appellant)	..	(Respondent)

Assessee by	Shri. Jitendra Trivedi, CA
Revenue by	Shri. Ritesh Misra, Sr. DR
Date of Hearing	23/09/2025
Date of Pronouncement	25/09/2025

Order under section 254(1) of Income Tax Act

PER ARUN KHODPIA, ACCOUNTANT MEMBER:

This captioned appeal is filed by the assessee against the order of Commissioner of Income Tax, Appeals CIT(A)/NFAC, Delhi (in short 'Ld. CIT(A)') u/s 250 of the Income Tax Act, 1961 (in short 'the Act'), dated 09.06.2025 for the A.Y. 2018-19, which in turn arises from the assessment order passed by National e-Assessment Centre, Income Tax Department, Delhi (in short 'Ld. AO') u/s. 143(3) r.ws. 143(3A) & 143(3B) of the Act dated 01.03.2021.

2. The grounds of the appeal raised by the assessee are as under:

“Being aggrieved by the order passed by the Hon'ble Commissioner of Income tax (Appeals), National Faceless Appeal Centre, Delhi ('CIT(A)'), Mahindra & Mahindra Limited, Mumbai (as successor to Mahindra Two Wheeler Limited which is in turn successor to Mahindra Trucks and Buses Limited) (hereinafter referred to as 'Appellant') hereby submits the following grounds of appeal for your sympathetic consideration; these grounds are being raised without prejudice to one another.

1. Disallowance of Advertisement & Sales Promotion Expense of Rs.3,26,00,000/-

a. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of Advertisement & Sales Promotion expenditure incurred of Rs.3,26,00,000 as capital expenditure and allowing depreciation thereon, ignoring the fact that no asset, tangible or intangible, was created, and the expenditure was not otherwise also capital-in-nature.

b. On the facts and in the circumstances of the case and in law, the learned CIT(A) ought to have allowed the expenditure as deduction u/s 37(1) of the Act, as claimed by the Appellant since such expenditure were incurred wholly for business purpose to increase sales and customer service.

c. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that even if the said expenditure resulted in some enduring benefit, it was not in the capital field and was, hence, allowable as a revenue expense under section 37 of the Act.

2. Adjustments made under section 143(1) of the Act

a. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in summarily rejecting/ not adjudicating the grounds with respect to adjustments made under section 143(1) for normal and book profit income and ignoring the submissions made by the Appellant.

b. On the facts and in the circumstances of the case and in law, the learned AO erred in computing assessed income starting with normal income of Rs.25,42,22,300 as per Intimation

under section 143(1) (as against Rs.25,40,55,650 as per return of income), without appreciating the submissions on merits stating that Rs. 1,66,652 has already been disallowed by the Appellant itself in the return of income filed as 'Any other item or items of addition under section 28 to 44DA'.

- c. On the facts and in the circumstances of the case and in law, the learned AO erred in considering assessed book profits at Rs.29,89,47,102 as per Intimation under section 143(1) as against the book profits as declared in the return of income of Rs.28,24,35,261, without appreciating the submissions on merits that deferred tax credit of Rs.1,65,11,841 was to be reduced from book profits as per section 115JB of the Act.

3. Interest charged under section 234A, 234B, 234C of the Act

a. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding interest under section 234A and not adjudicating ground on interest levied under sections 234C of the Act.

b. On the facts and in the circumstances of the case and in law, the learned the AO be directed to delete the interest charged or appropriately reduce interest under sections 234A, 234B of the Act, as per law, and interest under section 234C be restricted to amount as per Income tax return filed.

4. Initiation of penalty proceeding under section 270A of the Act

a. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming initiation of penalty proceedings under section 270A of the Act.

b. On the facts and in the circumstances of the case and in law, the learned CIT(A) ought to have quashed the penalty proceedings as the learned AO failed to specify in the assessment order whether penalty proceeding was initiated for under-reporting of income or for misreporting of income, in view of vague language used.

5. Assessment order passed under section 143(3) is bad in law and void ab initio

a) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the assessment order

passed in the name of Mahindra Trucks & Buses Limited on the ground that Appellant was in existence when the assessment proceedings were initiated.

b) On the facts and in the circumstances of the case and in law, the order dated March 01, 2021, passed under section 143(3) of the Act, for AY 2018-19 in the name and using the PAN of M/s. Mahindra Trucks & Buses Limited is void-ab-initio, bad-in-law and without jurisdiction as the said company merged with M/s Mahindra Two Wheelers Ltd. vide the order of the National Company Law Tribunal's (NCLT) dated June 30, 2020, and Mahindra Trucks & Buses Limited was no more in existence as on the date when the assessment order was passed.

The Appellant reserves the right to add to, amend or delete the above ground of appeal.”

3. Briefly state the assessee had filed its return of income for the Assessment Year 2018-19 on 12.10.2018 declaring total income at Rs. 25,40,55,650/-. The case of assessee, thereafter, was selected for complete scrutiny under CASS on the following issues

i. Duty Drawback

ii. ICDS Compliance and Adjustment

iii. Expenses Incurred for Earning Exempt Income.

4. In due course, notice u/s 143(2) of the Act was issued on 22.09.2019. Thereafter notice u/s 142(1) of the Act along with questionnaire seeking basic information were issued. In compliance, assessee furnished details on e-proceeding portal which was examined by Ld.AO.

5. The background of the assessee company, furnished before us by the Ld.AR is as under:

“APPELLANT'S BACKGROUND:

Mahindra Trucks & Buses Limited ('MTBL'), a division of Mahindra & Mahindra Limited ('MML'), manufactured commercial vehicles and maintained a dealer and service network, including M-Parts Plaza outlets (set-up and operated by MTBL distributors) for spare parts and after sales support. MTBL later merged with Mahindra Two Wheelers Limited ('MTWL') vide the National Company Law Tribunal ('NCLT') dated June 30, 2020, effective from August 1, 2020, with the appointed date of April 1, 2019. When the assessment order was passed on March 1, 2021, MTBL had already merged with MTWL; however, the order was issued in the name of MTBL using its PAN. Subsequently, MTWL merged with MML, and hence this appeal has been filed by MML and is being pursued by it as the "successor-in-interest" to MTWL.”

6. Ld.AO during assessment proceeding have observed certain facts to which the information was sought from the assessee accordingly, had proposed an addition on account of disallowance of expenses claimed under the head “Advertisement and Sale Promotion Expenses”.

7. On the aforesaid issue, it is observed that the claim of assessee was for Rs. 3.26/- crores as against similar expenditure for the previous assessment year i.e. A.Y. 2016-17 for Rs. 0.89 crore only. The extraordinary increases in said expenditure have been doubted by Ld.AO and explanation was sought from the assessee. It is submitted by the assessee that increase in expenses was on account of introduction of “Mahindra Parts Plazas”, which were exclusive retail shops of Mahindra Trucks and Buses Limited (MTBL), set up and by operated by MTBL distributors. The assessee has provided support to these plazas by reimbursing their initial set up cost and monthly operating services.

8. During the next year i.e. Financial Year 2018-19, also 32 new Plazas were opened. Hence, advertisement and Sales Promotion expense were further enhanced. The contention of assessee does not find favour with the Ld.AO, therefore, he treated the aforesaid expenditure as capital expenditure of the assessee to which a depreciation @ 25% was allowed and remaining amount of Rs. 2,44,50,000/- was added to the income

of the assessee. Consequently, penalty proceeding u/s 270A are also initiated separately for under reporting of income on account of misreporting.

9. Aggrieved with the aforesaid disallowances by the Ld.AO, assessee preferred an appeal before Ld. CIT(A). However, there was no success for the assessee as the findings of Ld.AO were approved by the Ld. CIT(A) and the appeal of the assessee is dismissed, treating the advertisement and sale promotion expense as capital expenditure of the assessee, not allowable deduction u/s 37 of the Act.

10. Dissatisfied with the order of Ld. CIT(A), assessee preferred an appeal before us.

11. At the outset, Ld. Authorized Representative on behalf of the assessee [in short 'Ld.AR'] has raised the issue that the assessment order u/s 143(3) passed in this case is without jurisdiction, void-ab-initio and bad in law as the same was passed against the assessee M/s Mahindra Truck & Buses Limited, which was not in existence when the order is passed on

01.03.2021, as the said company was merged with M/s Mahindra Two Wheelers Ltd. vide the order of NCLT dated 30-06-2020. Ld AR placed before us the copy of order of NCLT and a notice to Income Tax Authorities dated 12-06-2020 informing the AO about the next date of hearing. However, he was unable to produce any letter or communication to show that the assessee company had informed the Ld. AO, about final order of merger by NCLT. Accordingly, we do not find any substance in the argument of Ld AR, thus, such contention has been rejected.

12. Apropos the facts of the issue leading to addition in the hands of assessee, Ld. AR submitted that, as per distribution agreement with distributors, the assessee was obliged reimburse certain expenses incurred at distributors premises for Mahindra Parts Plaza to meet the initial setup and monthly operating expenses for 3 years from the commencement date. The plazas opened were owned/rented and operated by distributors and not by the assessee. It is further submitted that the Plaza were opened with the responsibility on distributors display and promote retail sale of the assessee's part with non exclusive rights for marking, sales and distribution. The assessee was not

responsible for any capital cost or permanent structure. The expenses incurred by distributors which were subsequently reimbursed were not for the asset creation. Such expenses were incurred in normal course of business without any enduring benefit, hence, neither capitalized nor any depreciation was claimed by the assessee. It is further submitted that the plaza's on which the expenditures were incurred, neither owned nor leased by the assessee. The said expenses were commercial in nature and were not linked to any asset creation by the assessee nor can it be treated as any leasehold improvements. Accordingly, no depreciation was claimed by the assessee. Ld.AR argued that Ld.AO was in error while treating the above expenses capital in nature, despite the fact that no new brands with enduring benefits was generated by the appellant, through such setup. The brand of assessee was already created in the past and was only advertising, supporting, maintaining and promoting the existing Mahindra brand to attract customers with standardize interior. Ld. AR shown us the quantum and nature of expenses incurred, detailed as under:

Expenses debited under head advertisement & Sales Promotion

The details of Rs. 3.26 crores is given below:

Expense Nature	Amount in Rupees
Mechanic & retailer Meetings and training expenses	13,09,688
Van Campaigns	57,257
Plaza Expenses-Initial costs (Inauguration Exp, Preoperative expenses, certificate charges, leaflets etc)	20,31,812
Plaza-Expenses-Monthly Expenses reimbursement (Salary to Plaza staff, rent of premises, Inventory holding cost, electricity, mobile exp, office maintenance)	74,11,508
Branding & Infrastructure (Furniture & Fixtures for standardized look across all Mahindra plazas, Logos, Lightings)	2,18,18,094
Total	3,26,28,359

13. The expenses agreed between the assessee and distributors as per copy of distribution agreement reads as under:

Expenses	Monthly		Monthly		Monthly	
Rent	600Sq feet	52000.00	No rise	52000.00	10% rise	57200.00
Salary(2+1) including TA/DA		40000.00	15% rise	46000.00	20% rise	52900.00
Mis expenses		10000.00	10% rise	11000.00	10% rise	12100.00
Total expenses		102000.00		109000.00		122200.00
MTBL monthly support	70%	71400.00	55%	59950.00	45%	54990.00
DB expenses share	30%	30600.00	45%	49050.00	55%	67210.00

Patna M Plaza						
Head	Nov 2016-Oct 2017		Nov 2017-Oct 2018		Nov 2018-Oct 2019	
Expenses	Monthly		Monthly		Monthly	
Rent	400Sq feet	55000.00	5% rise	57750.00	5% rise	60637.5
Salary(2+1) including TA/DA		61000.00	10% rise	67100.00	10% rise	73810.0
Mis expenses		10000.00	10% rise	11000.00	10% rise	12100.0
Total		126000.00		135850.00		146547.5

Inventory carrying cost 1%/month for Rs 2000000.00		20000.00	2000000.00	20000.00	2000000.00	20000.0
Total expenses		146000.00		155850.00		166547.5
MTBL monthly support	75%	109500.00	55%	85717.50	35%	58291.6
DB expenses share	25%	36500.00	45%	70132.50	65%	108255.8

14. It was the prayer that, such expenses ought to be treated as revenue and allowed as deductible expenditure u/s 37(1) of the Act. Ld.AR placed his reliance on the following judgments

- **MRF Ltd. v. DCIT [2021] 128 taxmann.com 21 (Madras)** - Held that expenditure on product advertisement, marketing and brand promotion is revenue in nature and allowable as deduction under section 37(1) of the Act
- **Indiabuild Villas Development (P.) Ltd. v. DCIT [2018] 98 taxmann.com 187 (Bangalore - Trib.)** - Held expenses on brand identity, logo and collateral design not attributable to any project could not be capitalized and were allowable as revenue expenditure
- **Fine Jewellery (India) Ltd. v. ACIT [2014] 48 axmann.com 16 (Mumbai - Trib.)** - Held that sales promotion and brand-building expenses are revenue in nature, unless they result in the creation of a capital asset or provide an enduring benefit to the assessee

- **Additional Case Laws**

1. Empire Jute Co. Ltd. v. CIT Citation: (1980) 124 ITR 1 (SC)

Ratio: "Enduring benefit" test not conclusive; if expenditure facilitates trading operations or business efficiency, it is revenue even if benefit may endure.

2. Alembic Chemical Works Co. Ltd. v. CIT Citation: (1989) 177 ITR 377 (SC)

Ratio: Commercial advantage of enduring nature may yet be revenue in character, depending on context and purpose of expenditure.

3. CIT v. Amway India Enterprises Citation: (2012) 346 ITR 341 (Delhi HC)

Ratio: Expenditure on distributor incentives, market development, brand promotion and visibility held to be revenue in nature.

4. CIT v. Salora International Ltd. Citation: (2009) 308 ITR 199 (Delhi HC)

Ratio: Advertisement expenses are revenue in nature; merely improving brand recognition does not convert them into capital expenditure.

5. Madras Industrial Investment Corporation Ltd. v. CIT

Citation: (1997) 225 ITR 802 (SC)

Relevant Principle: Revenue expenditure may give enduring benefit; spreading over years possible, but does not make it capital.

6. CIT v. Pepsico India Holdings (P.) Ltd.

Citation: (2012) 21 taxmann.com 165 (Delhi)

Relevant Principle: Expenditure incurred on neon signs and glow signs qualifies for deduction under section 37(1)

7. Asian Paints Ltd. Citation: (2012) 102 taxmann.com 375 (Bombay)

Relevant Principle: Expenditure incurred on 'Colour Idea Stores' as a part of its advertisement and sales promotion expenses accepted by the Assessing Officer in assessment proceedings.

8. CIT v. Kamal and Co. Citation: [1993] 203 ITR 1038 (Raj)

Relevant Principle: Financial results can be achieved by proper publicity and advertisement and particularly in respect of an expenditure of which assessee is not the owner and which was with the object of improving sales and the image of the firm and the ITAT was justified in coming to

the conclusion that the expenditure was incurred as a business expenditure.

9. PCIT v. Jubilant Foodworks Ltd. Citation: [2022] 144 taxmann.com 128 (Allahabad)

Relevant Principle: Modifications done for purpose of business, expenditure did not create any new asset and, thus, expenditure on renovation and repairs of stores incurred by assessee was necessary for purpose of business and it squarely fell under section 37(1).

15. Per Contra Ld. CIT-DR representing the revenue vehemently supported the order of revenue authorities and request to approve the same.

16. We have considered the rival submissions, perused the material available on records and the case laws relied upon by the assessee. On perusal of the nature of expenses and the purpose for which the same are incurred, we find that the expenditure is rightly booked under the head "*Advertisement & Sales Promotion Expense*", also there was not dispute about the genuines of such expenses. It is also a fact that the expenditure was incurred at the respective places of distributors for promotion of the existing products of the assessee. There might be certain expenses which looks like capital in nature such as Furniture & Fixtures for standardized look across all Mahindra plazas, Logos, Lightings, but since there is no asset creation by the assessee to claim its ownership on it, so as to capitalize

according to its useful life and enduring benefit. Accordingly, we agree with the contentions by the Ld. AR that the expenses are incurred in accordance with the terms of agreements with the distributors, in the regular course of business, including certain recurring expenses, which clearly are revenue in nature, even the Plazas wherein such expenses are incurred are owned / rented /operated by the distributors. There was also no claim of the assessee qua the furniture fixture etc. to have any right of ownership in terms of agreement with distributors. Therefore, as per ratios emerging from the jurisprudence relied by the Ld. AR, we are convinced to hold that expenditure on product advertisement, marketing and brand promotion is revenue in nature and allowable as deduction under section 37(1) of the Act.

17. In backdrop of the aforesaid observations, we are unable to concur with the finding of Ld. CIT(A) in holding that the expenditure is Capital in Nature, we thus set aside the impugned appellate order of Ld. CIT(A) and direct the Ld. AO to delete the disallowance of Rs. 2,44,50,000/- on account of capitalization of Advertisement and Sales Promotion Expenses. In result ground no 1 of the appeal of assessee is allowed.

Ground No 2, 3, 4: These grounds are consequential in nature, subject to verification and computations at the end of Ld. AO, therefore remanded to the file of Ld. AO, with the direction to consider the submissions of the assessee and adjudicate afresh, in accordance with provisions of law.

18. Appeal of assessee, therefore, stands partly allowed, in terms of our aforesaid observations.

Order pronounced in open court on 25.09.2025.

**Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT**

**Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER**

Mumbai; Dated 25/09/2025
Disha Raut, *Steno*

Copy of the Order forwarded to:

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

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai