

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.O.P.KANT, ACCOUNTANT MEMBER**

**I.T.A .No.-6101/Del/2013
(ASSESSMENT YEAR-2004-05)**

DCIT, Circle-15(10, Room No.222, C.R.Building, I.P.Estate, New Delhi (APPELLANT)	vs	Ralsons India Ltd., J-38, Udhog Nagar, Rohtak Road, Delhi-110041. PAN-AAACR0281P (RESPONDENT)
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Appellant by	Sh. V.R.Sonbhadra, Sr, DR
Respondent by	Sh. Anoop Sharma, Adv.

Date of Hearing	22.06.2016
Date of Pronouncement	19.08.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the Revenue assailing the correctness of the order dated 29.08.2013 of CIT(A), XVIII, New Delhi pertaining to 2004 –05 assessment year on the following grounds:-

1. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in considering the expense on purchase of 'tin plates for advertisement' as revenue nature without appreciating the fact that the same has enduring benefit to the business.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in relying on the decision of Hon'ble ITAT for A.Y. 2003-04 in assessee's own case without appreciating the fact that the order of ITAT is sub-judice before Hon'ble High Court and thus, the issue has not attained its finality.*
3. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.”*

2. The appeal came up for hearing on 14.06.2016 on which date, the Ld.AR relying upon the order dated 22.06.2012 in ITA NO.2845/Del/2011 alongwith C.O.No.-260/Del/2011 submitted that the issue is covered in assessee's favour and the said order has been relied upon by the CIT(A), accordingly the appeal of the Revenue should be dismissed.

3. Ld.Sr.DR submitted that the ITAT in 2003-04 AY though granted relief on tin plates however dismissed the CO filed. The Ld. AR in reply submitted that in the C.O. the assessee had agitated the jurisdictional issue also and qua the relief allowed by the CIT(A), a supportive ground had been raised. Thus the observation of the C.O. being dismissed is in the context of the legal issue raised by the assessee. As on merits, the relief granted by the CIT(A) stood confirmed. However, the Ld. AR was directed to file a copy of the grounds raised in 2003-04 AY and the appeal was adjourned on 20.06.2016. On the said date the Ld.AR filed copy of the grounds raised in 2003-4 AY alongwith copy of the grounds raised before the ITAT by the assessee and the Revenue and the assessment order for the said year. On the said date it was adjourned on the request of the Revenue to 21.6.2106 as copy of the assessment order was found missing from the file. The parties were directed to file the same which compliance has been made by the Ld.Sr.DR on the next date of hearing.

4. Ld. Sr.DR inviting attention to the order of the ITAT submitted that the facts are distinguishable as the assessee in its explanation before the AO has not referred to tin plates and has referred to glow signboards etc. It was his submission that the glow signboards do have an enduring benefit for the

assessee and infact various multi-national companies tend to pay the owners of specific sites to but display the glow signs. Thus it was argued it cannot be said that the glow sign board can be equated to tin plates which has been considered by the ITAT.

5. The Ld. AR on the other hand inviting attention to the assessment order submitted that the expenditure which has been disallowed in para 4.2 by the AO refers to tin plates. For ready-reference, the same is reproduced hereunder:-

*4.2. "Subject to above discussion, the expenditure incurred by the assessee on **purchase of tin plates for advertisement**, debited by the assessee under the head advertisement and publicity in the selling and distribution expenses in its P&L a/c amounting to Rs.46,76,362/- is disallowed in the hands of the assessee.*

(emphasis provided)

5.1. Referring to the departmental ground also, it was submitted that the grounds specifically mentioned tin plates. It was also his submission that even if it is accepted for a moment that there was a mixed expenditure for tin plate and glow sign boards on cycle rikshaw etc. even then it has to be allowed in terms of the decision of the Punjab & Haryana High Court in the case of **Liberty Group Marketing Division 315 ITR 125 (P&H)** and **CIT vs Orient Ceramics & Inds. Ltd. 358 ITR 49**. Without referring to any distinguishing fact or legal precedent, the judicial precedent available in assessee's own case that it is a revenue expenditure, it was submitted has to be followed as even then the claim of the assessee has to be allowed.

6. Ld. Sr.DR was required to address the judgements relying upon by the assessee and refer to any other decision either of the Jurisdictional High Court

or the Apex Court or any contrary view. The Ld.Sr.DR placed reliance upon the assessment order wherein specific reference is made to “tin plates” was not disputed by him.

7. We have heard the rival submissions and perused the material available on record. We find that in the peculiar facts and circumstances of the case, the Co-ordinate Bench in the aforesaid order of the ITAT (cited supra) was called upon to decide the following grounds:-

1. *“That on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.35,45,381/- made by the AO u/s 37 of the IT Act, 1961. The Ld.CIT(A) is not appreciated the fact that **purchase of tin plates for advertisement** are of enduring benefit of the business and, therefore, the same was rightly treated as capital expenditure.*
2. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.”*

7.1. Finding which was questioned before the Co-ordinate Bench and extracted in the said order at pages 2 & 3 read as under:-

*“5.1 I have carefully considered the reassessment order and the submissions made by the ld. AR. As per the facts of this case, the appellant has incurred an expenditure of Rs.35,45,581/- on account of purchase of tin plates for advertisement which is claimed as expenditure under the head advertisement and publicity expenses. The AO has treated the same as capital in nature and disallowed the above amount. It is argued by the ld. AR that **the appellant is a large manufacturer of tyres and tubes for cycles and rickshaws having its factory at Ludhiana (Punjab). The products namely tyres and tubes are sold all over India** and the turnover of the company for the year under consideration was Rs.220 crores. It is argued that **the expenditure on purchase of tin plates at Rs.35,45,581/- is a part of the total expenditure of Rs.2,39,84,109/- under the head advertisement and publicity against the above total turnover of Rs.220 crores on sales all over India.** It is argued that during the year the appellant has sold a total number of 6.37 crore tyres and tubes all over the country. It is further argued that **the tin plates purchased are in the size of 65 cm. x 15 cm and are pasted on the back side of rickshaws carrying the company's name and the product name.** The actual tin plate with the above advertisement was also shown by the appellant during the appellate proceeding and*

*its photocopy is placed on record which shows the picture of tyres and tubes with appellant company's name and logo and promotional material printed on it. **It is argued that considering the sales all over India, the tin plates are printed in different languages and given to dealers of concerned states for pasting on the rickshaws. It is argued that the life span of a tin plates is less than one year and that is why it is given to the dealers every year.** It is argued that since the tin plates are already given to the dealers for **advertisements, the same are no longer the property of the company and hence cannot be treated as capital asset.** The Id. AR has relied upon the decision in the case of CIT v. Liberty Group Marketing Division 315 ITR 125 (P & H) where in the context of neon sign and glow sign boards under similar facts it was held by the Hon'ble High Court that the same are not of enduring nature and are to be treated as revenue expenditure u/s 37 of the Act. It is further argued that similar expenditure claimed by the appellant has been allowed every year by the department and no such disallowance has been made either in the preceding years or in the succeeding years by successive AOs in scrutiny assessments made u/s 143(3) of the Act. In this regard, the Id. AR has filed copies of assessment order u/s 143(3) in its own case for A.Ys. 2004-05, 2005-06 and 2006-07, on perusal of which it is found that no such disallowance was made by the AO in such years. Under the facts and circumstances as discussed above and following the case law (supra). I am of the firm opinion that the expenditure for purchase of the above tin plates is clearly a revenue expenditure allowable u/s 37 of the Act. The impugned disallowance of Rs.35,45,581/- is, therefore, deleted.”*

(emphasis provided)

7.2. Aggrieved by this, the Revenue had raised the aforesaid grounds.

Considering the same, the Co-ordinate Bench came to the following findings :-

3. *“The only ground taken by the revenue is against the deletion of addition of Rs.35,45,381/- made by the Assessing Officer. The assessee has filed cross objection against the sustenance of the reassessment proceedings.*
4. *None attended on behalf of the assessee.*
5. *We have heard the Id. DR. After hearing, the appeal and cross objection are decided as under. As far as the revenue's appeal against the deletion of addition of Rs.35,45,581/- is concerned, we hold that **the assessee was engaged in the manufacturing of tyres and tubes of Cycle and Rickshaws and the same are being sold through its dealers all over India.** The perusal of the paper book available on record shows that individual cost of each plate comes around Rs.17.05. This fact is evident from the copy of the bills available on record. **These tin plates are printed in various languages at various places and the same were for***

advertisement and these plates were fixed on the rickshaws at various places. These plates were for advertisement and publicity of the product manufactured by assessee and sold through the network of dealers all over India. The turnover of the company during the relevant period was around Rs.200 crores. The authorized dealers were located in various parts of India. These tin plates were distributed to various dealers. **They have placed them on the rickshaws at all over India. These plates were not in the possession of assessee for the rest of the time. Assessee was also not aware about the condition of these plates thereafter. Thus, in our considered view, these tin plates were not of a life which can provide benefit of enduring nature.** In view of the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Liberty Group Marketing Division – 315 ITR 125 (P& H) wherein the neon sign and glow sign boards under similar facts have been held not having benefit of enduring nature and the amount was treated as revenue expenditure allowable u/s 37 of the Act. In our considered view, this expenditure on the tin plates used for the advertisement by placing on the rickshaws at various places at all over India was a revenue expenditure. Similar expenditure was treated as revenue in preceding and succeeding assessments by revenue authorities. Although the principles of res judicata is not applicable to the income-tax proceedings, however, in the past and subsequent years, such expenditure has been treated as revenue in nature and without any cogent reason, the revenue should not have disturbed the same. Therefore, we find no fault in the order of the CIT (A) in granting the relief.”

(emphasis provided)

7.3. The issues addressed in para 6 in the context of C.O. filed by the assessee demonstrate that the re-opening has been upheld which issue was challenged vide Ground 1, 2 & 3 as per copy filed before us.

6. “As far as the cross objection of the assessee, we have perused the original assessment order passed by the Assessing Officer and also the reply filed by the assessee during the assessment proceedings. We find that the Assessing Officer has asked justification for the admissibility of the expenditure including the tin plates expenditure. However, in the reply to this query, it is placed at page 2 & 3 of the paper book, nothing has been stated with regard to the tin plates expenditure. Further there is nothing mentioned in the assessment order itself about this expenditure. The record shows that the reassessment proceedings have been initiated by getting the necessary approval from the Commissioner, Delhi-V, New Delhi after recording the reasons which were supplied to the assessee for filing the objection. Therefore, in our considered view, the Assessing Officer while finalizing the initial assessment has not applied his mind. No discussion has been made

about this particular expenditure in the assessment order. The reply of the assessee to the query is also silent on the issue, thus it is clear from the records that the assessment order was passed without any application of mind and such non-application of mind is clear from the order of the assessment itself. Therefore, in our considered view, we find no fault in the order of CIT (A) in upholding the reopening of the assessment proceedings. We dismiss the cross objection.”

7.4. Ground No.4 it is seen is supportive of the relief granted by the CIT(A) stands addressed in para 5 of the Co-ordinate Bench's order. Accordingly we find that there is no partial disallowance sustained by the ITAT. We find that the AO though has referred only tin plates and the department has also referred only to tin plates. Considering explanation filed by the assessee before the CIT(A) and the judicial precedent thereon, in the absence of any factual or legal infirmity being pointed out the departmental ground is dismissed as being without any merit. Being satisfied by the reasoning and finding, the departmental appeal is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

The order is pronounced in the open court on 19th August 2016.

Sd/-
(O. P.KANT)
ACCOUNTANT MEMBER
Amit Kumar

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR,
ITAT NEW DELHI