

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH
“C”, MUMBAI BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.3948/Mum/2009

ASSESSMENT YEAR : 2005-06

Century Textile and Industries Limited , Century Bhawan, Worli Mumbai.-40 PAN: AAACC2659Q	Vs.	DCIT Circle 6(2), Aaykar Bhawan <i>Mumbai</i>
(Appellant)		(Respondent)

Assessee by : Sh. Y.P. Trivedi
Sh. S.S.Aggarwal(AR)

Revenue by : Sh. Amit Kumar Singh (DR)

Date of hearing : 06.05.2016

Date of Pronouncement : 05.8.2016

ORDER

PER PAWAN SINGH, JM:

1. The present is filed by assessee against the order of CIT(A) dated 27/02/2009, in respect of AYs 2005 – 06 and raised the following basic grounds:

- a. *CIT(A) erred in confirming disallowance of deduction under section 10 B of the Act consisting of (i) Sales of Hoops and wrappers, (ii) discount/ bonus on store items, (iii) staff agreement deposits forfeited, (iv) recovery against damaged property, (v) notice period salary received from staff and (vi) sundry balance written off total of Rs. 17,67,229/-*
- b. *CIT(A) erred in confirming the disallowance of leasehold amount written off Rs. 1,70,865/-*

- c. CIT (A) erred in confirming only 1/20th of mining and lease expenses incurred as against 1/10 of written off by the appellant.*
 - d. Disallowance of loss on abandonment of capital job of Rs. 31,01,677/-*
 - e. Disallowance of project expenses on Iron and steel of Rs. 4,58,90,095/-*
2. Brief facts of the case are that assessee is a Public Ltd Company. The company is in manufacturing of diverse products and also rose in the Shipping, Power Generation and Building. Assessee Company has several units located in different part of the country. One of the units of Assessee Company is 100% export-oriented unit and is eligible for deduction under section 10B of the Act. This unit has incurred loss amounting to Rs. 4, 24, 05,301/- while making the assessment the AO made a number of addition/ disallowance in respect of various claims in different units in the assessment order. Aggrieved by the order of AO assessee preferred appeal before CIT(A), and thereafter approached this tribunal in respect of above referred grievances raised in the forms of grounds of appeal as mentioned in para 1 of this order.
3. We have heard Ld. AR of the assessee and DR for revenue and perused the material available on record. AR of assessee filed written submission in the form of a chart and submitted/ argued that all of the grounds of appeal raised in the present appeal are either covered by the decisions of assessee's own case or by other order of Hon'ble High Courts. On the other hand Ld. DR controverted the submission of Ld. AR and argued that fact of each and every successive year has to be decided on the basis of facts of the case. We have considered the rival contentions of the parties and perused the material on record.
4. Now we shall consider the various ground raised in the present appeal. 1st ground for our consideration is various disallowance of deduction under section 10 B of the Act, which includes sale of hoops and wrappers, discounts/ bonus on the store item, staff agreement deposit forfeited,

recovery against damage property, notice period salary received from staff and sundry balance written off total of which is Rs. 17,67,229/-. AR of the assessee argued that this ground of appeal are having 6 components of various disallowance out of which the two components i.e. recovery against damaged property and notice period salary is not pressed and hence both the claims are dismissed. Issue / claim of sale of hoops and wrappers is stated to be squarely covered by the decision in ITA No. 1073/M/2008, for AY 2004-05, Vide ground No. 1(i) while dealing with the similar issue the coordinate bench of this Tribunal held as under: “

“we agree with the contention raised by the ld AR to the extent that hopes and wrappers are the pecking materials like other store bardana. The income from sale of said pecking material has consistently been allowed to the assessee in the earlier years. The ld DR before us could not bring any point to the effect that sales from hopes and wrappers is different from the sales of the store bardana sales. Accordingly the income derived from the sales of hoops and wrappers sales is hereby directed to be allowed.”

5. Claim in respect of Ground No. 1(ii) in respect discount/bonus on store items is covered vide ground number 1(ii) in ITA number 5935/M/2006 for AY 2003-04. We have seen that in ITA number 5935/M/2006 the coordinate bench of this tribunal held as under:

“with reference to item number, 2nd and 5th that is bonus received against purchase of Spears, the ld CIT(A) relied on the orders in earlier years. In holding that this item cannot be considered as income derived from the industrial undertaking. However, it seems from the orders ITAT in AY- 2002-03 in ITA number 6365/M/2005. This issue was restored to the file of AO for fresh examination. It was held as under:-

(ii) Regarding bonus received against purchase of imported spare of auto corners M/c amounting to Rs.24693/-it is

seen from the perusal of appellate order as well as the assessment order, that this issue has not been properly examined by either of the authorities below, therefore, on the facts and circumstances. This issue is restored back to the file of AO for considering it reference after giving a opportunity to the assessee. Thus, this issue is treated as allowed for statistical purpose

The remaining claims in respect of staff agreement deposit forfeited and sundry balance written off was disallowed vide ground 1(iii) in ITA No. 5935/M/06 for AY 2003-04 and Ground No 1(vi) in ITA No. 3926/M/05 for AY 2001-02 respectively.

6. Keeping in view the Principal of consistency and respectfully following the order of coordinate bench(s) in assessee's own case, for AY 2001-02, 2002-03 and in AY 2004-05, this Ground/ issue are decided accordingly in accordance with the above observation.
7. Next ground for our consideration is disallowance of leasehold amount written off of Rs. 1,70,685/- on the ground that it is capital in nature. AR of assessee argued that this issue is covered by the decision of coordinate bench of ITAT, Mumbai in ITA number 5935/M/2006, 4 AYs 2003 -04. We have seen that the similar issue was raised in ITA number 5, 95/M/2006 by ground number 4 and while deciding the grounds of appeal. It was held:

“24. The issue had been set aside to the file of AO in the preceding year in ITA number 3925 and 4170/M/2005 in the assessment year 2000-01, for examination of the issue in the light of special bench decision of the Truman in case of Mukund Ltd reported in 106 ITD 231(MumSB) for finding the nature of the premium part. Respectfully following the order, we set aside the order of CIT(A), and restored the issue to the file of AO for passing fresh order on

the impugned issue after allowing proper opportunity to the assessee. Ground number 6 is allowed for statistical purpose.”

8. Accordingly, respectfully following the order of coordinate bench in assessee's own case, the issue is restored to the file of assessing officer to decide in view of the direction given above. Accordingly, this ground is treated as allowed for statistical purpose.
9. Next ground for our consideration is that CIT(A) erred in confirming the action of AO by allowing only 1/20th of mining lease expenses, incurred as against 1/10 written off by the appellant. AR of assessee argued that this ground of appeal is covered in favour of assessee by the decision of this Tribunal in assessee's own case in AY 2003-04. We have seen that vide Ground number 5 in ITA No. 5935/M/2006 the coordinate bench of this tribunal while deciding the similar ground has observed as under:

“8.1 Ld counsel submitted that this issue stands decided in favour of the assessee by the tribunal in the earlier year. Ld CIT DR fairly admitted to this fact.

8.2. After going through the finding of the Tribunal, we find that this issue has come up for consideration in the earlier year. In case of assessee before the tribunal. In the assessment year 2001-02, the tribunal has allowed this ground following the assessee's own case for the assessment year 2000-01. The assessing officer has disallowed the lease expenses of Rs. 16,23,610/- as against 1/10 claimed at Rs. 81,180/- by the assessee. Since this issue has been decided in the earlier year allowing the assessee claim, therefore, in this year also, we do not find any reason to debit from the same. Accordingly, this ground is allowed in favour of assessee”

10. Accordingly, respectfully following the order of coordinate bench in assessee's own case, the issue/ Ground is allowed in favour of assessee.
11. Next Ground for our consideration is disallowance of Rs.31,01,677/- representing expenses incurred on the capital job which has been

abandoned during the financial year 2004 -05. The relevant facts in this regards are as follows. The expenditure in question has been incurred in existing Pulp and Paper Division of the assessee company the objective of the expenditure was to overcome the problem of dirt and specks in pulp and paper, by installing centricleaners in the factory. Subsequently, realising that the system would not be effective in the changed situation , the system was discontinued. The amount of 31,01,677/- representing the value of centricleaners and decker thicker was written off and claimed as revenue expenditure. The AO and CIT(A) disallowed the same. The plea of assessee is that expenditure has been incurred during the course of existing activities of manufacturing Pulp and Paper production and it should be appreciated that the expenses were incurred for improvement of the quality of the existing product not for new product. Reliance has been placed on the following judgment:-

- (1). CIT Vs. Priya Village Road Shows Ltd (332 ITR 594) Delhi High Court.
- (2). Indo Rama Synthetic (I) Ltd Vs CIT 333 ITR 18 (Del)
- (3) CIT Vs Tata Robins Fraser Ltd 253 ITR 227 (Jhar)

Ld DR for the revenue has relied on the orders of the lower authorities.

12. We have carefully considered the rival submissions of the parties. In the present case, the assessee has incurred an expenses of Rs.31,01,677/- in its existing business of Paper and Pulp Division. The facts on record show that the expenditure was incurred to improve the efficiency of the existing production system inasmuch as the assessee wanted to overcome the problem of dirt and specks in Pulp and Paper. To achieve the said objective, expenditure of Rs.31,01,677/- was incurred towards installation of centricleaners in the pulp mill, but realizing the ineffectiveness of the system, the same was discontinued. The expenditure has been claimed as a revenue expenditure on the ground that it was incurred for improving the quality of the products under manufacture and not for production or

development of any new product. In our considered opinion, it is not a case where any new asset is acquired for the purpose of carrying out any production activity, rather the centricleaners which were installed by the assessee are not capable of contributing to the production process independently. Considering the objective of the expenditure, which was to create improvement and efficiency in the product in an existing line of business, and in the absence of any creation of an independent asset, in our view such expenditure is liable to be viewed as revenue in nature and deserves to be allowed. We hold so. Thus, ground of appeal no. d/4 of the assessee is allowed.

13. The next ground of the assessee is with regard to the disallowance of Rs.4,58,90,095/-. The relevant facts in this regard are that the assessee wanted to set-up an Iron and Steel division and incurred various expenses on account of such project. In para 8 of the order of the CIT(A), the details of such expenditure is noted which shows that it comprised of (i) capital work-in-progress Rs.2,90,10,817/-, piling work-in-progress Rs.1,31,24,563/- and construction work-in-progress – Rs. 37,54,714/-, totalling to Rs.4,58,90,095/-. Subsequently, the assessee dropped the idea of setting-up the Iron and Steel project and therefore the aforesaid expenses were claimed as revenue expenditure. The said claim of the assessee has been disallowed by the Assessing Officer as well as by the CIT(A) on the ground that the expenses are capital in nature and had nothing to do with the existing line of business of the assessee and, therefore, could not be allowed as revenue expenditure.
14. Before us, the learned representative for the assessee pointed out that the assessee is engaged in diversified businesses and it wanted to set-up an Iron and Steel division for which the impugned expenditure have been incurred, but the said project was later on abandoned. It was pointed out that so far as expenditure on acquisition of fixed assets was concerned, the same has not been claimed as a revenue expenditure, which amounted to

Rs.4,07,88,300/-. The claim in question is with regard to the expenses incurred of revenue in nature but otherwise capitalized in capital work-in-progress. In this connection, reliance has been placed on the judgments of Hon'ble Delhi High Court in the case of Priya Village Road Shows Ltd. (*supra*), Indo Rama Synthetic (I) Ltd. (*supra*) and that of Hon'ble Jharkhand High Court in the case of Tata Robins Fraser Ltd. (*supra*). On the other hand, the Ld. DR has defended the order of the authorities below by relying on the same.

15. We have carefully considered the rival submissions. It is quite well settled proposition that to find out as to whether a particular expenditure is capital or revenue in nature, the objective for incurring of such expenditure is required to be examined. In the case of Priya Village Road Shows Ltd. (*supra*), the Hon'ble Delhi High Court noted that if an expenditure is incurred for starting a new business which was not carried out by the assessee earlier, then, such expenditure is to be viewed as capital in nature, whereas if the expenditure incurred is in respect of an existing line of business and even if it is for expansion of business, then, such expenses are to be treated as business expenses. The decision of the Hon'ble Delhi High Court has been relied upon by the assessee before us for the proposition that where an expenditure is incurred without creating any asset in a line of business which is otherwise aborted, then, such an expenditure is allowed as revenue expenditure. In our considered opinion, in such a situation the expenses which are of revenue nature alone are to be allowed as a deduction. Notably, assessee has submitted before us that the expenditure of Rs. 4,07,88,300/- incurred for acquisition of fixed asset has not been claimed as a deduction. Nevertheless, we find that so far as the instant claim of the assessee for deduction of Rs.4,58,90,095/- is concerned, the details on record do not show or bring out its nature. Therefore, it would be in the fitness of things that the Assessing Officer examines the details of such expenditure and allows deduction of such

expenses which are otherwise revenue in nature. Therefore, for the aforesaid limited purpose we set-aside the matter back to the file of Assessing Officer who shall allow the assessee an opportunity of being heard and thereafter pass an order afresh on this limited point as per law. Thus, on this issue, assessee partly succeeds.

16. In view of the above observation in discussion, the appeal of assessee is partly allowed.

Order Pronounced in the open court on this 5th day of August 2016.

Sd/-

G.S.PANNU
(ACCOUNTANT MEMBER)

Mumbai; Dated : 05.08.2016

Sd/-

PAWAN SINGH
(JUDICIAL MEMBER)

SK PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT- concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai