



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI NABIN KUMAR PRADHAN, ACCOUNTANT MEMBER**

ITA no.1233/Mum./2014  
(Assessment Year : 2009-10)

Reliance Trends Ltd.  
3<sup>rd</sup> Floor, Court House  
Lokmanya Tilak Marg  
Dhobi Talao, Mumbai 400 002  
PAN – AADCR7079N

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-7(2), Mumbai

..... Respondent

Assessee by : Shri Farrokh V. Irani  
Revenue by : Shri Yashwant V. Chavan

Date of Hearing – 04.08.2016

Date of Order – 19.08.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal by the assessee is directed against the order dated 23<sup>rd</sup> December 2013, passed by the learned Commissioner (Appeals)-13, Mumbai, for the assessment year 2009-10.

2. In ground no.1, assessee has challenged the disallowance of expenditure claimed amounting to ₹ 31,16,85,997. In ground no.2, assessee has made an alternative claim to restore the matter back to

the file of the learned Commissioner (Appeals) for re-examining the issue.

3. Brief facts are, the assessee a company is engaged in the business of trading in apparel, luggage and accessories of national and internationally reputed brands. The assessee has established its business from earlier years by acquiring three shops and in the previous year relevant to the assessment year under dispute, it has added nine more shops by acquiring the business from Reliance Retail Ltd. as a going concern. For the assessment year under consideration, the assessee filed its return of income originally on 29<sup>th</sup> September 2009, declaring total loss of ₹ 36,13,38,711. Subsequently, the assessee filed a revised return of income on 29<sup>th</sup> March 2011, claiming credit of TDS of ₹ 30,58,610. During the assessment proceedings, the Assessing Officer while verifying the audited accounts of the assessee, noticed that the assessee had shown capital work in progress of ₹ 65,10,77,066 out of which an amount of ₹ 31,16,85,997, was claimed as revenue expenditure while computing the total income. He, therefore, called upon the assessee to justify the expenditure claimed. In reply to the query raised, though, the assessee submitted a detailed explanation justifying the expenditure claimed to be of revenue in nature, however, the Assessing Officer did not find merit in the submissions of the assessee. He observed that in the balance sheet,

the assessee has shown the expenditure as pre-operative expenditure. He also noted that in the books of account, the assessee itself treated the expenditure as capital by capitalizing it as capital work-in-progress. The Assessing Officer observed, for claiming the expenditure, the assessee has followed dual accounting policy one for the purpose of Companies Act and another for Income Tax Act. As far as the pre-operative expenditure which was capitalized under the head "*Project Development Cost*". The Assessing Officer observed that as per assessee's own version, the expenditure claimed was not incurred in connection with running of day-to-day business but for acquiring new outlets, hence, the expenditure was capital in nature. Accordingly, he disallowed assessee's claim of expenditure. Being aggrieved of such disallowance of expenses, assessee challenged the same by preferring an appeal before the learned Commissioner (Appeals).

4. Learned Commissioner (Appeals), after considering the submissions of the assessee in the context of the fact and material on record agreed with the assessee that the expenditure incurred by the assessee is revenue in nature, hence, admissible as deduction under section 37 of the Act. However, the learned Commissioner (Appeals) after perusing the agreement between the assessee and Reliance Retail Ltd. for taking over the business as going concern, noted that

the transfer date of business is 31<sup>st</sup> March 2009 as per the agreement and as per the terms of the agreement, the expenditure incurred towards salary and retirement benefits of the employees till the date of transfer i.e., 31<sup>st</sup> March 2009 was to be incurred by the transferor and the assessee had no obligation to pay to the employees, therefore, the assessee cannot claim the expenditure relating to transfer of employees for the previous year 2008–09 which in terms of agreement has to be incurred by the transferor. The learned Commissioner (Appeals), therefore, held that the expenditure debited under the head "*Project Development Expenditure*" though are revenue in nature but they are not admissible as business expenditure under section 37 of the Act as they are not the expenditure of the assessee but of a different entity. Accordingly, he upheld the disallowance made by the Assessing Officer, though, on a different reasoning.

5. Learned Authorised Representative appearing for the assessee submitted, the learned Commissioner (Appeals) having accepted the expenditure debited to the Profit & Loss account as project development expenditure is revenue in nature, it was not justified to disallow the same on the ground that they do not pertain to assessee's business. Learned Authorised Representative submitted, the learned Commissioner (Appeals) completely misread / misinterpreted the

different clauses of the slump sale agreement between the assessee and Reliance Retail Ltd. to conclude that the expenditure claimed by the assessee as per the terms of the agreement relates to Reliance Retail Ltd., and was borne by them and not by the assessee. Learned Authorised Representative referring to certain clauses of slump sale agreement dated 18<sup>th</sup> June 2009 submitted, as per clause 2.1 of the agreement the transferor i.e., Reliance Retail Ltd. has transferred its business as a going concern on "as is where is" basis to the assessee. He submitted, as per clause 6.1 of the agreement, the transferee i.e., the assessee on the transfer date taken over employees of the transferor under more or less same terms and conditions without any interruption or break in service. He submitted, as per clause 6.2 of the agreement, transferor Reliance Retail Ltd. has discharged its liability and obligation in respect of its employees up to date of transfer by making payment of all employment benefit. He submitted, under the said clause it is also provided that transferor will settle any dispute in relation to employees in respect of period up to their transfer. The learned Authorised Representative submitted, as per the terms of the agreement transfer date is 31<sup>st</sup> March 2009. Thus, it was submitted by the learned Authorised Representative, learned Commissioner (Appeals) completely misreading the clause of the agreement has concluded that the expenditure claimed by the assessee under the

terms of the agreement was to be borne by the transferor Reliance Retail Ltd. Learned Authorised Representative submitted in fact for rectifying the mistake committed by the learned Commissioner (Appeals) the assessee has filed an application under section 154 of the Act which still remains un-disposed of. He, therefore, submitted the disallowance made should be set aside.

6. Learned Departmental Representative has no objection if the matter is restored back to the file of the learned Commissioner (Appeals) with direction to dispose off assessee's application under section 154.

7. We have considered the submissions of the parties and perused the material available on record. Undisputed facts are, assessee has already started his business operation from the earlier assessment year and was having three shops. In the relevant previous year, assessee has acquired nine more shops of Reliance Retail Ltd. by entering into a slump sale agreement on 18<sup>th</sup> June 2009. The assessee has debited expenditure of ₹ 31,16,85,997 to the Profit & Loss account under the head "*Project Development Cost*". During the assessment proceedings, the Assessing Officer has treated this expenditure as pre-operative expenses, hence, in the nature of capital expenditure and has accordingly disallowed the same. The learned Commissioner

(Appeals), however, considering the submissions of the assessee in the light of facts and material brought on record before him including the slump sale agreement, as could be seen from Para-3.4 of his order, has accepted assessee's claim that the acquisition of the business of Reliance Retail Ltd., as a going concern, amounts to extension of existing business, hence, revenue expenditure incurred during the year by the assessee will be allowable under section 37 of the Act. After verifying the nature of expenditure debited as project development cost, learned Commissioner (Appeals) also agrees that nature of such expenditure is revenue. However, on going through the details of project development expenditure, he found that such expenditure comprises of salaries and wages of employees amounting to ₹ 19,80,43,811, contribution to P.F. superannuation fund, gratuity, leave encashment of ₹ 93,07,836, employees welfare and other communities of ₹ 1,04,87,728 and professional fee of ₹ 96,18,540. Thus, he observed that most of these expenditures are related to employees on account of acquisition of the business of Reliance Retail Ltd. He observed, as per terms of the agreement the date of transfer is 31<sup>st</sup> March 2009 and the agreement provided that till the date of transfer all employee related expenditure were to be borne by the transferor i.e., Reliance Retail Ltd. Thus, he was of the view that as the expenditure debited by the assessee as project development

expenditure relate to the period prior to the date of transfer, such expenditure does not pertain to the business of the assessee since as per the agreement, it was required to be incurred by the transferor Reliance Retail Ltd. From the aforesaid observations of the learned Commissioner (Appeals), two very important aspects emerge. Firstly, he has accepted that the assessee is already in business operation and acquisition of the business of Reliance Retail Ltd., as going concern is only an extension of its existing business, hence, the revenue expenditure debited to Profit & Loss account as project development expenditure is allowable under section 37. The second important aspect is learned Commissioner (Appeals) after verifying the nature of expenditure debited towards project development expenditure has also concluded that it is revenue in nature. The aforesaid findings of the learned Commissioner (Appeals) have not been challenged by the Department by filing any appeal. Hence, they have attained finality. The only dispute in the present appeal is, whether as per the terms of agreement the expenditure claimed by the assessee was to be borne / incurred by the assessee or it was to be borne / incurred by Reliance Retail Ltd. In this regard, it is the say of the assessee that learned Commissioner (Appeals) has misinterpreted / misread clauses of slump sale agreement, hence, the order passed by him is erroneous. We have noted that for the aforesaid reason, the assessee on 20<sup>th</sup>

February 2014, has filed an application before the learned Commissioner (Appeals), purportedly under section 154 of the Act for rectification of mistake in the order passed by him. It has been stated before us, the aforesaid application has not been disposed off by the learned Commissioner (Appeals). In our view, learned Commissioner (Appeals) should have disposed off the application under section 154, as it is pending for more than two years. Be that as it may, considering the fact that the assessee has raised certain issues relating to expenditure claimed by it under the head "*Project Development Cost*" in the application filed under section 154 which is still pending before the learned Commissioner (Appeals), without entering into merits of assessee's claim we consider it appropriate to restore the issue back to the file of the learned Commissioner (Appeals) for deciding the issue raised by the assessee in the application filed under section 154 of the Act. As the said application is pending before the learned Commissioner (Appeals) for more than two years, we direct him to dispose of the same expeditiously by the end of October 2016. We further make it clear, as the learned Commissioner (Appeals) has already formed an opinion with regard to the nature of expenditure and admissibility of its claim as revenue expenditure which has attained finality in the absence of any challenge by the Department, he should restrict himself to the subject matter of dispute raised in the

application filed under section 154 by the assessee and dispose off the same after providing reasonable opportunity of being heard to the assessee by passing a speaking and reasoned order.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 19.08.2016

**Sd/-**  
**NABIN KUMAR PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 19.08.2016**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai