

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

सर्वश्री बी.आर.बास्करन, लेखा सदस्य एवं संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE S/SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.4653/Mum/2013
(निर्धारण वर्ष / Assessment Year :2009-10)

Dy.Commissioner of Income Tax 8-(2), Room No.209, 2 nd floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	Shri Raghunandan S Kamath Shop No.1, N-2, Grace Apartments N S Road No.13, Juhu, Mumbai-400049
स्थायी लेखा सं./PAN :		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Uday B Jakke
प्रत्यर्थी की ओर से/ Respondent by :	Shri Aditya Kumar

सुनवाई की तारीख / **Date of Hearing** : **2.12.2015**
घोषणा की तारीख / **Date of Pronouncement** : **9.12.2015**

ORDER

PER B.R.BASKARAN,AM:

The appeal filed by the revenue is directed against the order dated 29.11.2012 passed by Ld CIT(A)-17, Mumbai and it relates to the assessment year 2009-10. The revenue is aggrieved by the decision of Ld CIT(A) in holding that the repairs and maintenance expenses incurred by the assessee is allowable as revenue expenditure.

2. The assessee is the proprietor of two concerns by name M/s Natural Ice Cream and M/s Lands Flavour. Both the concerns are selling ice creams. Besides the above, the assessee is drawing salary from M/s

Kamaths Ourtime Ice creams P Ltd and also running hotel & reort in the name of Land flavours at Mangalore. The assessee claimed a sum of Rs.34.40 lakhs under the head "repairs and maintenance expenses" in his proprietary concern named M/s Natural Ice creams. The assessee claimed to have incurred repairs and maintenance expenditure in renovation of two ice creams shop. The assessing officer took the view that the expenditure incurred on renovation will give an enduring benefit to the assessee and accordingly disallowed the above said claim by treating the same as Capital expenditure. The Ld CIT(A), however, allowed the claim of the assessee and hence the revenue has filed this appeal before us.

3. We have heard the parties and perused the record. At the time of hearing, the Ld A.R submitted that the area of two shops is around 700 Sq.ft., meaning thereby, the average expenses incurred by the assessee per sq.ft. works out to Rs.5,000/-. We are of the view that the Ld CIT(A) was right in principle in holding that the renovation expenses shall be allowable as revenue expenditure, since his view is supported by various decisions relied upon by him and also relied upon by the Ld A.R before us.

4. There should not be any doubt that the burden to prove the nature of expenses lies upon the assessee. The average rate of repair expenses incurred by the assessee was Rs.5,000/- and hence it is the responsibility to prove that the renovation of the shops having an aggregate area of 700 sq.ft. costed that much. Further, the assessing officer did not have occasion to examine the nature of repairs expenses claimed by the assessee, since he took the view that the same is to be treated as Capital expenditure. Accordingly, we are of the view that this issue requires fresh examination at the end of the assessing officer. At the same time, we wish to reiterate that the expenditure incurred on renovation alone is allowable as revenue expenditure. Accordingly, we set aside the order of

Ld CIT(A) on this issue and restore the same to the file of the assessing officer with the direction to examine the claim of the assessee with the nature and purpose of expenses incurred, nature of work carried on by the assessee in the two shops, the renovation plan prepared by the engineer/architect and such other details that may be found to be necessary. Based on such examination, the assessing officer may take appropriate decision in accordance with the law.

5. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Order pronounced in the open court 9th ,Dec,2015.

Sd sd

(संदीप गोसाईं/**SANDEEP GOSAIN**)
न्यायिक सदस्य/**Judicial Member**

(बी.आर.बास्करन/ **B.R.BASKARAN**)
लेखा सदस्य /**Accountant Member**

मुंबई Mumbai; दिनांक Dated..9th , Dec,2015

व.नि.स./ **SRL, Sr. PS**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai