IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 312 of 2014 (O&M)
Date of decision: 2.9.2015

Commissioner of Income Tax II, Chandigarh
……Appellant

M/s Glaxo Smithkline Consumer Healthcare Limited
…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Ms. Urvashi Dhugga, Advocate for the appellant-revenue.
Mr. Rohit Jain, Advocate for the respondent-assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.309 and 312 of 2014 as the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No.312 of 2014.

2. ITA No.312 of 2014 has been preferred by the revenue under Section 260A of the income Tax Act, 1961 (in short, "the Act") against the

order dated 6.3.2014, Annexure A.6 passed by the income Tax appellate Tribunal, Chandigarh Bench 'A' Chandigarh in ITA No.929/CHD/2009, for the assessment year 2000-01, claiming following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in holding part of expenses related to large scale renovation running into more than one financial year and resulting into conversion of a hall into a full fledged top class show room as allowable being revenue expenditure and remaining part of these as not allowable being capital expenditure?
>
> ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing/estimating 70% of the expenditure as revenue expenditure whereas it has also itself observed that the expenditure incurred on flooring, cementing, plastering of walls, laying of sanitary lines and pipes which on one hand are of enduring benefit and capital in nature?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.312 o 2014 may be noticed. The assessee company deals in manufacturing and trading of malted products such as Horlicks, Boost etc. The assessee filed return of income for the assessment year 2000-01 on 14.11.2000 at ₹ 1,00,77,74,936/-. Initial assessment in the case was completed under Section 143(3) of the Act at an income of ₹ 1,10,49,98,156/-. In the assessment proceedings, deduction under Chapter VIA under Section 80G of the Act amounting to ₹ 7,54,194/- was allowed and deduction of ₹ 1,32,15,921/- claimed under section 80HHC of the Act was reduced to ₹ 1,12,21,363/-. Deduction of ₹ 11,72,30,053/- claimed under Section 80I of the Act was disallowed. Expenditure of ₹ 56,94,220/-

incurred towards product development and ₹ 1,68,32,340/- towards consumer product research were treated as capital expenditure. Interest on borrowed capital claimed at ₹ 4,06,55,312/- was disallowed and capitalized amount of ₹ 3,77,65,412/- claimed in the computation of income as enterprise expenses not charged was treated as capital expenditure and depreciation of 60% was allowed thereon. The Assessee company incurred substantial expenditure amounting to ₹ 4,77,59,930/- on renovation/interior decoration on leased office premises. The renovation expenditure was claimed by the assessee as revenue expenditure. The Assessing Officer while passing the original order dated 26.3.2003, Annexure A.1 made addition by disallowing expenditure incurred on renovation. The said addition was made primarily holding that the expenditure was capital in nature and accordingly depreciation @ 10% was allowed by the Assessing Officer. It was held that in terms of Explanation 1 to Section 32(1) of the Act, any expenditure incurred towards renovation/improvement of leased building was to be held as capital in nature. On appeal by the assessee, the Commissioner of Income Tax (Appeals) [CIT(A)] upheld the order of the Assessing Officer. The Tribunal restored the issue of expenditure incurred on account of renovation/interior decoration at the leased office premises to the file of the Assessing Officer and directed the Assessing Officer to verify the details of expenditure and ascertain which expenditure fell within the purview of Explanation 1 to Section 32(1) of the Act out of the total expenditure of ₹ 4,77,59,930/- incurred on renovation and interior decoration. In reassessment proceedings in order under section 254/143(3) of the Act dated 30.12.2008, the entire expenditure claimed was added again. No documentary evidence was filed by the assessee regarding expenses on renovation and interior decoration. The CIT(A) on appeal vide order dated 9.7.2009, Annexure A.5 allowed partial relief in respect of renovation expenses. The revenue did not file any appeal. However, the assessee went in appeal before the Tribunal. Vide order dated 6.3.2014, Annexure A.6, the Tribunal bifurcated the expenditure under various heads:-

> "i. ₹ 4,18,27,604.75 towards temporary/wooden partitions/fittings, whitewashing, false ceiling, interior work, sanitary fittings, fire detecting system, ducting for air conditioning etc.
>
> ii) ₹ 41,86,755/- towards consultancy expenses paid to Cushman and Wakefield, Currie and Brown and other consultants for rendering professional advice in relation to the renovation work;
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> iii) ₹ 50,20,070/- towards architecture fees, temporary art work'
>
> iv) ₹ 72,12,870/- towards carpets and tile;
>
> v) ₹ 12,63,330/- towards travelling and shifting/installation expenses;
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> vi) ₹ 8,87,694/- towards Stationeries, plants, boards;
>
> vii) Other revenue expenses like telecommunication expenses, expenditure on security services and other miscellaneous expenses."

Hence the instant appeal by the revenue.

4. We have heard learned counsel for the parties.

5. Learned counsel for the revenue submitted that under Explanation 1 to Section 32 of the Act, the assessee could claim only depreciation as the amount spent by it was capital in nature. It was urged that the Tribunal had erred in bifurcating the renovation expenses by holding 70% as revenue and only 30% as capital in nature. Support was

gathered from the judgment of the Apex Court in **CIT Vs. Sarvana Spinning Mills P. Limited,** (2007) 293 ITR 201, judgments of this Court in ***M/s Liberty Group Marketing Division, Liberty House, Railway Road, Karnal vs. CIT, Aayakar Bhawan, Sector 13, Karnal***, ITA No.97 of 2012, decided on 17.9.2013, ***Uttar Bharat Exchange Limited vs. Commissioner of Income Tax, Delhi,*** (1965) Vol. IV ITR 550 (P&H), ***Silver Screen Enterprises vs. Commissioner of Income Tax, Patiala***, (1972) 85 ITR 578 (P&H), ***M/s Associated Engineers vs. Commissioner of Income Tax, Income Tax Office, Aaykar Bhavan, Amritsar***, ITA No.82 of 2005, decided on 16.7.2014 and judgment of Delhi High Court in ***Modi Spinning & Weaving Mills Co. Limited vs. Commissioner of Income Tax,*** (1993) 200 ITR 544 (Del.).

6. On the other hand, learned counsel for the assessee supported the findings recorded by the Tribunal.

7. No doubt, under Explanation 1 to Section 32 of the Act, where an assessee carrying on any business or profession in a building which is not owned by him, expends amount on renovation, extension or improvement to the leased building, then the same is capitalized and the assessee is entitled to claim depreciation in respect thereof.

8. Adverting to the factual matrix herein, the Tribunal bifurcated the expenditure under various heads as follows:-

> "i. ₹ 4,18,27,604.75 towards temporary/wooden partitions/fittings, whitewashing, false ceiling, interior work, sanitary fittings, fire detecting system, ducting for air conditioning etc.
>
> ii) ₹ 41,86,755/- towards consultancy expenses paid to Cushman and Wakefield, Currie and Brown and other consultants for rendering professional advice in relation to

the renovation work;

iii) ₹ 50,20,070/- towards architecture fees, temporary art work'

iv) ₹ 72,12,870/- towards carpets and tile;

v) ₹ 12,63,330/- towards travelling and shifting/installation expenses;

vi) ₹ 8,87,694/- towards Stationeries, plants, boards;

vii) Other revenue expenses like telecommunication expenses, expenditure on security services and other miscellaneous expenses."

9. The Tribunal on perusal of the evidence estimated the revenue expenditure and came to the conclusion that 70% expenditure was revenue and 30% was capital. The relevant findings recorded by the Tribunal read thus:-

"33. Now the only aspect to be considered is the allowability of the expenditure incurred on temporary wooden partition, fittings, white washing etc. and on carpet tiles amounting to ₹ 4.18 crorres and ₹ 72.12 lacs. As referred to by us in the paras hereinabove, the expenditure incurred by the assessee on the renovation of its office has brought into existence certain items of enduring nature and certain expenditure has been incurred by the assessee on renovation of building which is revenue in nature. The assessee has failed to provide the complete details under the various sub heads of expenditure and both the Assessing Officer and the Commissioner of Income Tax (Appeals) have failed to address the said issue on the surmise that the assessee had not furnished complete details before them. Even before us, though the assessee has furnished sample bills which have been filed before us and referred to by us in the paras hereinabove but the perusal of the said bills reflect the expenditure being incurred on flooring, cementing, plastering of walls, laying of sanitary lines and pipes which are admittedly of enduring benefit of the assessee and are capital in nature. The assessee has converted a large hall into an office with attached bathrooms for which the inlay work had been carried out by the experts arranged by the assessee and even architectural fee of ₹ 25 lacs has been paid by the assessee for carrying out the different operations. In the totality of the above said facts and circumstances, we are of the view that the expenditure incurred by the assessee consist of both capital and revenue expenditure. However, in the absence of complete details, we are constrained to estimate the disallowance of capital expenditure in the hands of the assessee. We hold that out of the total expenditure, 30% of the expenditure incurred by the assessee is capital in nature and the same merits to be disallowed in the hands of the assessee in both the years. The said disallowance is in respect of two sub heads of expenditure of ₹ 4.18 cr. And ₹ 72.12 lacs. In respect of other expenses, we have already dealt upon the issues in the paras herein above. The Assessing Officer is directed to recompute the income in the hands of the assessee in line with our directions. The grounds of appeal raised by the assessee are thus partly allowed in both the assessment years."

10. Learned counsel for the revenue has not been able to show that the findings recorded by the Tribunal are erroneous or perverse in any manner. The view adopted by the Tribunal in the given facts and circumstances is a plausible view. The legal proposition enunciated in the judgments cited by the learned counsel for the revenue is well recognized but these pronouncements being based on individual fact situation involved therein do not help her. Consequently, no substantial question of law arises.

11. Viewed from another angle, the case here relates to the assessment years 2000-01 and 2001-02 where the allowability of the expenditure is not in dispute but the issue is whether it had to be allowed in one year as revenue expenditure or by way of depreciation under Explanation 1 to Section 32 of the Act by spreading it over the years. At

present, the number of years that have gone by from the initial year has been about more than thirteen years. Learned counsel for the revenue has not been able to demonstrate that there had been any change in the rate of taxation during these years. Thus, even if the substantial portion of the expenditure had been capitalized and depreciation allowed under Explanation 1 to Section 32 of the Act, at the prevalent rate admissible under the Act and the Income Tax Rules, 1962, the entire amount would have been allowed as deduction on account of depreciation by now and the case would be revenue neutral. Therefore, in such circumstances as well, we do not find any justification in interfering with the order of the Tribunal.

12. In view of the above, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 2, 2015
'gs'

(Ramendra Jain)
Judge