

आयकर अपीलीय अधिकरण, अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, AHMEDABAD
(THROUGH VIRTUAL COURT)
BEFORESHRI RAJPAL YADAV, VICE PRESIDENT
And SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

Sl. No(s)	ITA No(s)	Asset. Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	2270/Ahd/2018	2013-14	Assistant Commissioner of Income Tax, Panchmahal Circle, Civil Lines Road, Godhra-389001	M/s. Setco Automobiles Ltd., Baroda Godhra Highway, Kalol, Panchmahal-389330 PAN No. AAACG7777K
2.	2271/Ahd/2018	2014-15	Assistant Commissioner of Income Tax, Panchmahal Circle, Civil Lines Road, Godhra-389001	M/s. Setco Automobiles Ltd., Baroda Godhra Highway, Kalol, Panchmahal-389330 PAN No. AAACG7777K

Revenue by :	Shri M.S.A. Khan, CITDR.
Assessee by :	Shri Nirmitt Mehra, AR

सुनवाई की तारीख/Date of Hearing : 21.10.2020

घोषणा की तारीख /Date of Pronouncement : 10.11.2020

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

Both the appeals have been filed by the Revenue for A.Ys. 2013-14 & 2014-15 which are arising from the order of the CIT(A)-4, Vadodra dated 16.08.2018, in the proceedings under Section 143(3) r.w.s 144C(3) & 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. The revenue has raised the following grounds of appeal:

“1. The CIT(A) erred in facts and law in directing AO to allow the Product Development Expenses amounting to Rs. 3,47,32,310/-, after verification, overlooking the fact that the Product Development Expenses were incurred for the purpose of development of new products and therefore the benefit of the expenditure extended to succeeding years and hence the expenses were capital in nature and could not be allowed as revenue expenses.

2. The learned CIT(A), erred in admitting fresh issue during the appellate proceedings which is in contravention to the rule 46A, further the assessee did not claim Product Development Expenses as deduction at the time of computing the total income, neither claimed at the time of assessment proceedings, as he was of the view that these are not allowable expenses being revenue in nature.”

3. The issues raised by the Revenue in ground No. 1 and 2 are interconnected to each other. Therefore we have clubbed both of them together for the sake of brevity and convenience. The issue raised by the Revenue is that the Learned CIT-(A) erred in directing to allow the deduction of the Product Development Expenses amounting to Rs.3,47,32,310/- representing capital expenses, as revenue expenditure in violation of the provisions of Rule 46A of Income Tax Rule.

4. The facts in brief are that the assessee in the present case is a limited company and engaged in the business of manufacturing of automotive products. The assessee in the year under consideration filed the return of income declaring income at Rs.84,10,370/- which was assessed under Section 143(3) r.w.s. 144C(3) of the Act vide order dated 28th November 2016 at Rs.91,83,304/- after making the addition/disallowance of Rs.7,72,934/-.

5. The assessee preferred an appeal to the Learned CIT-(A) and claimed that it has incurred an expense of Rs.3,47,32,310/- under the head Product Development Expenses but omitted to claim the deduction under Section 37(1) of the Act. Accordingly, the assessee first time made a fresh claim for the deduction of product development expenditure before the Learned CIT-(A).

6. The assessee before the Learned CIT-(A) pointed out that there is no denial under the provisions of the Act for making the fresh claim during the appellate proceedings. The assessee in support of his contention referred to the order of the Hon'ble Gujarat High Court in case of CIT vs. Mitesh Impex&Ors (2014) 270 CTR 66 (Guj) and order of the Hon'ble Bombay High Court in case of CIT vs. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom).

7. The assessee regarding its fresh claim of Rs.3,47,32,310/- submitted that similar deduction was also made in the earlier years which was allowed by the ITAT in ITA Nos. 1337 & 1339/Ahd/2011 vide order dated 19th February 2016. Accordingly, the assessee contended that no capital assets or any benefit of enduring nature is arising out of the impugned expenses. Accordingly, it prayed to the Learned CIT-(A) to allow the claim of the assessee.

8. The Learned CIT-(A) admitted the fresh claim of the assessee by observing that the appellate authorities have been empowered to entertain the fresh claim made by the assessee which was not made before the AO during the assessment proceedings after relying on the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Mitesh Impex&Ors(supra).

9. The Learned CIT-(A) on merit found that similar claim has already been allowed by the ITAT in the own case of the assessee in the earlier years. Accordingly, the Id. CIT-A directed the AO to allow the claim of the assessee but after quantification and verification of the expenses.

10. Being aggrieved by the order of the Learned CIT-(A) the Revenue is in appeal before us.

11. The Learned DR before us submitted that claim was not made by the assessee during the assessment proceedings therefore the same cannot be allowed by the Learned CIT-(A) without calling the remand report under the provisions of Rule 46A of Income Tax Rule.

12. The Learned DR also submitted that the impugned expenditure is capital in nature. It is because the benefit of such expenses will arise over a period of time i.e. exceeding the period of one year. Thus, the same can be allowed as deduction over a period of time, the assessee will enjoy the benefit of it. Therefore, the same cannot be treated as revenue in nature.

13. On the other and the Learned AR before us submitted that the assessee can make a fresh claim before the Learned CIT-(A) despite the fact that the claim was not made by the assessee in the return of income. The Learned AR in support of his claim relied on the judgment referred in the order of the Learned CIT-(A).

14. The Learned AR, on the merit contended that claim of the assessee has already been allowed by the ITAT in the earlier Years. There is no any change in fact and circumstances of the case in hand from the case of the earlier assessment years.

15. Both the Learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

16. We have heard the rival contentions of both the parties and perused the materials available on record. The first controversy that arises before us for our adjudication whether there was any violation of the provisions of Rule 46A of Income Tax Rule. Admittedly, the assessee has made a fresh claim before the Learned CIT-(A) which was not made either in the Income tax Return or before

the AO during the assessment proceedings. Income of the assessee has to be determined under the provisions of Act. In case the assessee unknowingly omitted to claim the deduction either in the Income Tax Return or during the assessment proceedings it is entitled claim the benefit of such deduction before the higher authorities. In holding so we place our reliance on the judgment of Hon'ble Gujarat High Court in case of CIT vs. Mitesh Impex&Ors (2014) 270 CTR 66 (Guj)where it was held as under:

“40. Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assesseees for deductions under sections 80-IB and 80HHC of the Act.

41. In the decisions that we have noted above, the Courts have considered such questions when a legal contention or a claim was based on material already on record but raised at an appellate stage. On such premise we wholeheartedly agree that the appellate authority and the Tribunal would have the power to entertain any such new ground, legal contention or claim. However, it is only the Bombay High Court in the case of CIT v. Pruthvi Brokers & Shareholders (P.) Ltd. (supra), which has travelled a little beyond this preposition and come to the conclusion that even if facts necessary to examine such a claim are not placed before the assessing officer and, therefore, not on record, there would be no impediment in the Commissioner (Appeals) entertaining such a claim. Such an issue does not arise in these appeals. We would, therefore, reserve our opinion on this limited aspect of the matter if and when in future the question presents before us in such form. For the present, we answer Questions (3) and (4) against the Revenue and in favour of the assesseees in manner described above.”

We also find support and guidance from the order of the Hon'ble Bombay High court in case of CIT vs. Pruthvi Brokers & Shareholders (*supra*). The relevant finding of the court is reproduced as under:

“From a consideration of decision of the Supreme Court rendered in the case of Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688/[1990] 53 Taxman 85, it is clear that an assessee is entitled to raise not merely additional legal submissions before the appellate

authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. They may choose not to exercise their jurisdiction in a given case is another matter. [Para 11]

Further the observation of the Supreme Court in the case of Jute Corpn. of India Ltd. (supra) to the effect 'if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made....' or 'that the ground became available on account of change of circumstances or law,' does not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz., 'if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made....' clearly relate to cases where the ground was available when the return was filed and the assessment order was made but 'could not have been raised' at this stage. The words are 'could not have been raised' and not 'were not in existence'. Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz., where 'the ground became available on account of change of circumstances or law.' [Paras 12 and 13]"

17. The assessee, indeed made a fresh claim before the Learned CIT-(A) but did not file any fresh documents. Moreover, the Learned CIT-(A) after admitting the fresh claim directed the AO to allow the deduction of the same after verification and quantification of the expenses. Therefore, the AO is still empowered to reject the claim of the assessee if such expenses represents the capital expenditure within the provisions of law. As such, we find that there was no fresh evidences as alleged by the revenue, which were entertained by the Learned CIT-(A) in violation of the provisions of Rule 46A of Income Tax Rule. Accordingly, we hold that there was no violation of the provisions of Rule 46-A of Income Tax rules.

18. Moving to the merit of the case. We find that the issue of the Product Development Expenses has already been settled by the ITAT in the earlier

Assessment Year vide ITA Nos. 1337 & 1339/Ahd/2011. The relevant extract reads as under:

“9. We have heard the rival submissions and perused the material on record. In the present case, the issue is about allowability of product development expenses which were held by A.O. be a capital in nature. We find that ld. CIT(AO while deciding the appeal for A.Y. 2002-03 and following it has given a finding that due to incurring of product development expenses, the installation capacity did not increase and assessee did not set up a separate and independent unit from manufacturing and no capital asset was brought into existence. He has further held that entries in the books of account wee not determinative of the allowability or otherwise of the expenditure. Before us, Revenue has not brought any material on record to controvert the finding of ld. CIT(A). In view of the aforesaid facts, we find no reason to interfere with the order of ld. CIT(A).”

10. Thus, the ground of Revenue is dismissed.”

19. Thus, we are of the view that such Product Development Expenses are recurring in nature.

20. We also note that the ld. DR has not brought anything on record suggesting that there was any benefit of enduring nature or any new assets coming into existence out of such expenses. Accordingly, we hold that such expenses are of revenue in nature but subject to verification of the AO as held by the Learned CIT-(A). Hence, we uphold the finding of the Learned CIT-(A). Thus, the ground of appeal of the Revenue is dismissed.

21. In the result, the appeal filed by the Revenue is dismissed.

Coming to ITA No. 2271/Ahd/2018 relevant to A.Y. 2014-15:-

22. The revenue has raised following ground:-

“1. The CIT(A) erred n facts and law in directing AO to allow the Product Development Expenses amounting to Rs. 3,72,39,500/-, after verification, overlooking the fact that the Product Development Expenses were incurred for the purpose of development of new products and therefore the benefit of the expenditure extended to succeeding years and hence the expenses were capital in nature and could not be allowed as revenue expenses.

2. *The learned CIT(A), erred in admitting fresh issue during the appellate proceedings which is in contravention to the rule 46A, further the assessee did not claim product development expenses as deduction at the time of computing the total income, neither claimed at the time of assessment proceedings, as he was of the view that these are not allowable expenses being revenue in nature."*

23. At the outset, we find that the facts of the case on hand are similar to facts of the in ITA No. 2270/Ahd/2018 relevant to A.Y. 2013-14 which has been decided by us in the favour of the assessee vide paragraph Nos. 16 to 20 of this order. Accordingly, we hold that the finding in the above mentioned paragraphs will be mutatis mutandis apply in the case on hand. For detail discussion refer the relevant paragraph. Thus, the ground of appeal of the Revenue is dismissed.

24. In the result, the appeal filed by the Revenue is dismissed.

25. In the combined result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the Court on 10th November,2020 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/11/2020
TANMAY, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**