Court No. - 3

Case :- INCOME TAX APPEAL No. - 51 of 2022
Appellant :- The Pr. Commissioner Of Income Tax Aaykar Bhawan Noida And Another
Respondent :- M/S Jubilant Foodworks Ltd
Counsel for Appellant :- Gaurav Mahajan

With

Case :- INCOME TAX APPEAL DEFECTIVE No. - 29 of 2022
Appellant :- The Pr. Commissioner Of Income Tax Aaykar Bhawan Noida And Another
Respondent :- M/S Jubilant Foodworks Ltd
Counsel for Appellant :- Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Gaurav Mahajan, learned counsel for the appellants.

2. Income Tax Appeal No.51 of 2022 relates to the A.Y. 2013 – 14 and Income Tax Appeal Defective No.29 of 2022 relates to the A.Y. 2012 – 13.

3. Since certified copy of the impugned order of the Tribunal and detailed order of the CIT Appeal have been filed alongwith the Income Tax Appeal No.51 of 2022 and the facts are common except that the figures of repair are different. With the consent of learned counsel for the appellants treating the Income Tax Appeal No.51 of 2022 as a leading appeal and facts thereof are being noted.

4. For the A.Y. 2013-14 the assessee claimed Rs.47,37,14,260/- as revenue expenditure and for the A.Y. 2012-13 he claimed Rs.23,12,19,190/- as revenue expenditure which were disallowed by the assessing officer and treated as capital expenditure and accordingly these

amounts were added in the income of the assessee for the assessment of the respective Assessment years.

5. The respondent - assessee is engaged in business of manufacturing and sale of pizza and other related fast food items under the brand name of "Dominos" and non-alcoholic beverages from its retail outlets across the country. The total number of retail outlets are said to be about 129. In the appeal filed by the respondent – assessee, under Section 246 A of the Income Tax Act, 1961 (hereinafter referred to as "the Act, 1961"), the Commissioner of Income Tax (Appeal) New Delhi, exhaustively examined and discussed the matter and held as under :

> ***"5.2 Ground 6 and 7***
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> *5.2.1 These grounds are related to the disallowance of Rs.47,37,14,260. The appellant in his computation in his profit and loss account had claimed a total expenditure of Rs 66,67,14,696 on existing outlets which were operational during the year under consideration. The assessing officer during the assessment had examined the nature of these expenses.* ***The appellant himself had classified the amount of R 19,30,00,437 as capital in nature,*** *The balance amount of Rs 47,37,260 was claimed as revenue expenditure. The assessing officer while examining this expenditure in the assessment order had noted that the said expenditure was for improvements on 139 outlets operated by the appellant for dominos and dunkin doughnuts. The assessing officer examined the provisions of section 30 under which the appellant had claimed the aforesaid deduction as being of revenue nature and also the provisions of section 37. The assessing Officer has specifically discussed the issue in Para section 4 and 5 of the order.*
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> *"(iii) Treatment of the leasehold Improvements As Revenue Vs Capital in I.T Act. 1961-Every business entity is required to maintain the accounts in a proper way as per rules applicable. The expenditure incurred by the business entity is allowed/ disallowed by the Income Tax Authorities while computing the Profit and loss accounts of the business entity. There is always a difference of opinion identifying some sort of expenditure as to whether revenue expenditure or capital expenditure. Briefly stated as under-*
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> *Revenue Expenditure:- Revenue expenditure is an expenditure charged against operation. It is a term used to contrast with capital expenditure. Revenue expenditure is intended to benefit the current expenditure. Some of the examples for revenue expenditure are-Expenses incurred in the normal course of business viz., expenses of administration, manufacturing and selling products. Cost of goods purchased for resale, Depreciation on fixed assets, interest on loan for business, etc.*

Capital Expenditure: Capital expenditure is an expenditure intended to benefit future periods, in contrast to revenue expenditure. The term is generally restricted to expenditures that add fixed assets or that has the effect of increasing the capacity, efficiency, life span, or economy of operation of an existing fixed asset.

An addition increases quality of fixed assets. Hence amount spent on the purchase of fixed asset is treated as capital expenditure. The quality of a fixed asset is said to have increased when expenditure results in any or some of the following events :

When probable useful life of the fixed asset increases;

When capacity of the fixed asset increases;

When efficiency of the fixed asset increases;

when operating economy is achieved;

In View of Explanation 1 to section 32(1), the expenditure could not be claimed to be revenue expenditure for reason only that it is in relation to a property of which the assessee is a lessee and if the expenditure is incurred in respect of predominantly fixed capital assets, the expenditure cannot be claimed to be revenue expenditure for reason only that it facilities the assessee's business.

In the instant case, the expenditure being in the nature of extensive renovation beautification of the stores value a much high cost and also an enduring benefits.

(iv) The lease made for various stores are generally for an initial period of three years tenure with a right to the lessee to repair and renovate as per the assessee company's business requirements. The assessee has incurred certain expenses for customizing the leased premises for its use and an amount of Rs. 47,37,14,260/- has been debited to the Profit & Loss Account and considered as revenue in nature. The assessee submitted that incurring of such expenditure had not given rise to any fresh capital asset but was only to give a better look to its business premises to attract customers and cater to the taste of clientele and also to meet the international standards of Domino's Pizza' and 'Dunkin Donuts' being chains of fast food restaurants and take away.

(v) In view of details of renovations discussed at Para no.3.3 above, the nature of above expenses itself would show that these are not merely expenses on current repair and in fact are in nature of fixtures and other fixed assets. Expenses on lease hold improvements liable to be treated as capital expenditure, particularly when the amount spent is significantly very heavy and not in nature of current repair. Benefit of these expenses are not confined to the year under the consideration only. In this case, allowing deduction for these expenses in one year will distort the computation of the taxable income of the year, reliance in this regard is placed on decision of Hon'ble Supreme Court in case of Madras Industrial investment Corpn. Ltd. v. CIT (1997)225 ITR 802."

5.2.2 The appellant on the other hand in his submissions has given a detailed discussion on what is the nature of expense incurred. ***The appellant states that the expenses were for generally setting up the***

store taken on lease in accordance with the standard directions adopted for the branded stores. *The appeltant stated that the consideration paid was for tiling work, woodwork, waterproofing, false ceiling and other such repairs. The principal reliance of the appellant was on the decision of the honourable high court in the case of CIT Vs Hi Line Pens Private Limited 175 ITR 132.* ***The said case studies the distinction between the term current repairs and the term repairs which were used in section 30 (a)(2).*** *The appellant further argued that the deduction for the expenses of the nature quoted above is also eligible under section 37(1) as such expenses were in fact necessitated by the line of business of the appellant. The appellant further discusses the term capital expenditure and stated that expenses were incurred for nature of work did not fall within the gamut of capital expenditure and squarely fell within repairs as envisaged under section 30 of the act. In para 21 of his submission, the appellant has tabulated and bifurcated the aforesaid expenses into 13 separate heads. For each categorization, the appellant has quoted a number of judgements which pertain to the nature of expenses in the categorisation and terms them as revenue in nature for the purposes of eligibility under the Income-tax Act. The AO has also led the argument that the appellant had been claiming these expenses as being of capital nature during the assessment year 2012-13. The appellant in his reply has stated that the erroneous classification need not be perpetuated in the subsequent years. Reliance on the jurisdictional high courts decisions which have also held this proposition as correct have been given by the appellant.*

5.2.3 The arguments of the assessing officer presented in the assessment order and the submissions of the appellant have been examined. The quoted case law to the extent, the same are relevant have also been considered. It is seen from the nature of business of the appellant that the appellant is a franchise of Dunkin Donuts and Domino's Pizza. ***The appellant takes a bare shell premises on lease from various cntities during the ycar. It is also evident that the Domino's store is required to have a specific and outlook., Therefore in order to run a Dominos outlet, the appelant is necessarily required to make extensive modifications in the premises which has been obtained on lease for the purposes of the store. Modification of the construction involves the expenses on tiling, glazing, false ceiling, paints, plaster etc. It apparently does not create any new asset in the case of the appellant. It is also seen that once such store is required to be shifted or closed the residual value of such expense is practically nil***. *A certain degree of long term benefit, say, for a period of 3 years is not deniable from the work of flooring etc. carried out in the store. However, this in itself does not create any capital asset in the case of the assessee on which depreciation can be claimed. The Act does not provide for a simple mechanism of amortization of expenses other than those covered under section 35D.*

5.2.4 The submissions of the appellant also indicate that this process of setting up new stores is a continuous presses thereby implying that every year some new stores are setup. In view of this fact also the expenditure of renovation and repairs of stores assumes a character which is revenue in nature. Further, the appellant primarily cannot carry out his business in a store which is any different from a store of Domino,s pizza outlet. As a result, the expenditure incurred by the appellant can squarely fall u/s 37(1) as being one which is necessary *for business. The specific observation by the AO that these were not claimed as revenue in earlier years factually does not in any manner, alter the eligibility of the expenses in the present year under reference.*

Further examining the provisions of Section 30 it is seen as under :

In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed -

(a) Where the premises are occupied by the assessee -

(i) As a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

(ii) Otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;

(b) Any sums paid on account of land revenue, local rates or municipal taxes;

(c) The amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

Explanation-For the removal of doubts, it is hereby declared that the amount paid on account of the cost of repairs referred to in sub-clause (i), and the amount paid on account of current repairs referred to in sub-clause (ii), of clause (a), shall not include any expenditure in the nature of capital expenditure.

5.2.5 ***It is noted that the expression used in sec.30(a)(i) refers to the term repairs in relation to a tenant whereas 30(a)(ii) per se refers to the term current affairs. As a result, the expenditures falling in term repairs are to be seen in a wider context when examining the same from the point of view of a tenant. It is so because being a lessor, the tenant is not the owner of the property. Therefore, he is not entitled to expend more or more liberally for repairs or renovations. The AO*** *in his order refers that the aforesaid expenses do not lie within the ambit of current repairs. It is* ***however seen that Sec. 30 talks of the term repairs for tenant and not current repairs****. In the case of CIT V. Hi Line Pens (P.) Ltd. (2008) 175 taxman 132 (DHC), the jurisdictional Delhi High Court had held as under:*

"4. The facts of the case are that the assessee had claimed the aforesaid expenditure of Rs. 14,03,835 as a deduction under section 30(a)(i) of the said Act. The expenditure was in respect of tenanted premises which had been taken by the asscssee on lease for the purposes of its business. The expenditure was towards false ceiling, fixing tiles, replacing glasses, wooden partitions, replacement of electric wiring, earthing, replacement of Gl pipes etc. As per the assessce since the premises were not in use for a long time, the assessee was required to make these expenditures to make the premises usable for the purposes of its business. The assessee's contention was that these expenses were not incurred for creating any new asset but for making the premises usable for the purposes of its business. The assessee's claim was also that the expenditure was in the nature of revenue expenditure and was not of a capital nature as no new asset was brought into existence"

……….

"16. After having considered the arguments advanced by the learned counsel for the parties and examined the decisions cited by them, We are of the the view that the assessee's claim for deduction under section 30(a)(i) has been rightly allowed by the Tribunal. The decisions cited by the learned counsel tor the revenue relate to 'current repairs'. There is a clear distinction between the expressions repairs and the expression current repairs. It is obvious that the word 'repairs' is much wider than the expression 'current repairs'. This fact has also been taken note of by the Supreme Court in the case of Saravana Spg. Mills (P.) Ltd.(supra). The expression 'current repairs' is much more restricted than the word repairs because the latter is qualified by the word 'current'. What the assessee has done in present case has been construed to be repairs by the Tribunal as a finding of fact. It has not brought about any new asset and more importantly it was not the intention of the assessee to bring about any new capital asset. The expenses that were incurred by the assessee were towards repairing the premises taken on lease so as to make it more conducive to its business activity. Such expenses would clearly fall within the expression of repairs to the premises as appearing in section 30(a)(i). The Legislature has made a distinction between expenses incurred by a tenant for repairs' of the premises and expenses incurred by a person who is not a tenant towards current repairs to the premises. This distinction has to be given meaning. Perhaps the logic behind the distinction was that a tenant would, by the very nature of his status as a tenant, not undertake expenditures as would endure beyond his likely period of tenancy or create a new asset. Whereas, an owner may undertake expenditures so as to even bring about new assets of capital nature. It was, therefore, necessary to qualify the expenditure on repairs. The deduction was, therefore, limited to expenditure on current repairs only. It follows, therefore that the cost of repairs that have been incurred by a tenant in respect of such premises would have to be allowed under section 30(a)(i). The question of disallowing such an expenditure and relegating the assessee to claim depreciation under section 32 does not arise. The assessee has not claimed depreciation. It has claimed deduction under section 30(a)(i). Once the assessee's claim falls within that provision there is no question of considering the question of applicability of section 32. Consequently, the question that has been framed is answered in favour of the assessee and against the revenue. The appeal is dismissed."

5.2.6 In the case of Installment Supply (P) Ltd vs. CIT [1984] 17 Taxman 172 (Delhi), the Hon'ble Delhi High Court held

"7. The Tribunal after considering the nature of the work executed by the assessee, however, came to the conclusion that the amount spent Could not be said to be a current repair and that the expenditure had certainly secured to the assessee and advantage of very enduring benefit and is, therefore, a capital expenditure. This approach of the Tribunal, in our opinion, is erroneous in law. The question of the repairs has to be considered in the larger context of the business necessity or expediency. If the expenditure incurred by the assessee is so related to the carrying on or to the conduct of the business that it mail be regarded as an integral part of the profit earning process, then it is not for purposes of securing to the assessee a capital asset. The

possessions of the premises in the shape of big hall by converting a large number of small rooms into it make it more suitable for office purposes. It is a condition of carrying on business more profitably and efficiently by the assessee. In such a case the expenditure can be regarded as a revenue expenditure. The expenditure on the repairs of the building which ultimately belongs to the owners and not to the assessee can not also be said to be in the nature of a capital expenditure. The structural changes made by the assessee and the conversion of small rooms into a big hall cannot be in the nature of creation of a capital asset."

5.2.7 ***The consistent common thread in the aforesaid judgements is determination of the nature of expenses which repairs/ renovates when the same has been carried out by a tenant. The judgement of Hi Line Pens discusses the nature of expenses which are substantially similar to those of the appellant. The Judgement of M/s instalment Supply states that in the absence of a capital asset being created the nature of the expense for business has to be of a revenue nature. Keeping in view the aforesaid judgments the expenses indicated at Rs 47,37,14,260/ are held to be expenses of revenue nature and allowable revenue expenditure to the appellant."***

6. While deduction claimed by the assessee towards revenue expenditure as aforesaid, were disallowed by the Assessing Officer, it was allowed by the CIT (Appeal) by the aforesaid order dated 03.07.2018 passed in Appeal No.273/2016-17.

7. Aggrieved with the order of the CIT(Appeal), the appellant herein/Income Tax Department filed Appeal being I.T.A.T. No.6558/Del/2018 for the A.Y. 2013-14 and appeal No.612/Del/2019 relating to A.Y. 2012-13. Both the aforesaid appeals were decided by the Income Tax Appellate Tribunal, Delhi Bench I - 1, New Delhi, by the impugned common order dated 08.12.2021. The Tribunal concurred with the view taken by the CIT (Appeal) and noticing the facts in brief, held as under :

"6. The sole controversy is with respect to treatment of expenditure on account of leasehold improvement considered by AO as capital expenditure.

7. During the course of assessment proceedings and on perusing the computation of income, AO noticed that assessee had claimed deduction u/s 37 of the Act of Rs.47,37,14,260/- on account of leasehold improvements. Assessee was asked to justify the claim of expenditure as Revenue in nature. Assessee made the submissions which was not found acceptable to AO. AO noted that assessee has *done massive level improvements costing a very huge amount resulting into the creation of assets, meeting with the international parameters for obtaining and running the stores of Dominos Pizza and Dunkin Donuts – chain of restaurants and takeaways which according to AO has resulted into creation of asset with the nature of Infrastructure Improvement which materially extend the useful life or increase the value of the infrastructure. He was of the view that the expenditure being in the nature of extensive renovation and beautification of the stores, results into an enduring benefit to the assessee. He therefore held the expenditure incurred to be of capital in nature requiring capitalization. He therefore denied the claim of Revenue expenditure but however allowed the depreciation at 15% amounting to Rs.710,57,139/- and thus disallowed the net expenditure of Rs.40,26,57,121/-.*

8. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the submissions of the assessee decided the issue in favour of the assessee and while deciding the issue has noted that assessee is a franchise of 'Domino's Pizza' and 'Dunkin Donuts' and had take on lease bare shell premises of various entities during the year under consideration. In order to run a Dominos outlet having a specific ambience and outlook, assessee was required to make extensive modifications in the premises that was obtained on lease and the modification did not create any new asset. He has further noted that the process of setting up new stores to be a continuous process thereby implying that by every year some new stores are setup and thus the expenditure on renovation and repairs of stores assumes the character of revenue in nature. He has further given a finding that assessee cannot carry out his business in a store which is any different from a store of Domino's pizza outlet and for this reason also the expenditure incurred by the assessee falls u/s 37(1) of the Act as being one which is necessary for business. CIT(A) thereafter relying on the decision of Hon'ble Delhi High Court in the case of CIT vs. Hi Line Pens (P.) Ltd. [2008] 175 taxman 132 (DHC) held expenses to be revenue in nature. Aggrieved by the order of CIT(A), Revenue is now before us.

9. Before us, Learned DR took us to the findings of ITO and supported the order of AO. He also placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of Bharat Gears Ltd. Vs. C.I.T. in [2011] 337 ITR 368 (Del.)

10. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of CIT(A).

11. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the treatment of expenditure which has been considered by AO to be of capital in nature as against the claim of the assessee of being revenue in nature. We find that CIT(A) after considering the detailed submissions of the assessee has given a finding that considering the nature of business of the assessee, the modifications done in the various lease premises taken by the assessee for the purpose of business did not create any new asset, the expenditure of renovation and repairs of stores assumed a character of revenue in nature and the expenditure incurred by the assessee was necessary for the purpose of business and squarely fall u/s 37(1) of the Act. Before us, no fallacy in *the findings of CIT(A) has been pointed out by Revenue. The case law relied upon by Revenue is distinguishable on facts and therefore not applicable to the present facts of the assessee.*

In such circumstances, we find no reason to interfere with the order of CIT(A) and thus the Ground of Revenue is dismissed. 12.

In the result, appeal of the Revenue is dismissed."

8. We find that the findings recorded by the CIT (Appeal) as affirmed by the Income Tax appellate Tribunal are findings of fact based on consideration of relevant material on record. The CIT (A) and the Tribunal have came to the conclusion that by incurring the aforesaid expenditure no new asset has come into existence.

Thus, we find that no substantial question of law is involved in the impugned order of Tribunal. Therefore, both the Appeals filed by the appellants under Section 260 A of the Act are **dismissed**.

Order Date :- 22.7.2022/vkg