

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “सी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH ‘C’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, V.P & DR. B.R.R. KUMAR, A.M.**

आयकर अपील सं. / ITA No. 2699/De1/2015

निर्धारण वर्ष / Assessment Year: 2001-02

Hindustan Coca-Cola Beverages Pvt.ltd.,  
Orchid Centre, 3<sup>rd</sup> Floor,  
DLF Golf Course Road,  
Sector-53, Gurgaon-122001.  
PAN-AAACH3005M

.....अपीलार्थी / Appellant

vs

The DCIT,  
Circle-12(1), New Delhi

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by: Sh. Ajay Vohra, Sr.Adv.,  
Sh. Gaurav Jain, Adv, Sh. Aditya Vohra &  
Ms. Meenal Goyal, CA

प्रत्यर्थी की ओर से / Respondent by: Ms. Paramita M.Biswas, CIT DR

सुनवाई की तारीख / <b>Date of Hearing : 05.03.2020</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.04.2020</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, VP**

The present appeal filed by assessee is against order of CIT(A)-4, New Delhi dated 30.03.2015 relating to assessment year 2001-02 against the order passed under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The assessee has raised following grounds in this appeal:-

*“The Appellant prefers following grounds in appeal against the order dated March 30, 2015 passed by the Commissioner of Income-tax (Appeals)-IV, New Delhi [hereinafter referred to as “CIT(A)”] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as “Act”].*

*1.0 That the order passed by CIT(A) partly allowing the appeal filed by the Appellant without appreciating facts on record is bad in law and is liable to be quashed;*

**2.0 Disallowance of non-compete fees**

*2.1 That the Ld. CIT(A) erred in law in holding that the amount of Rs. 50,64,83,985 claimed on account of ‘non-compete’ fees was capital expenditure in nature not eligible as a revenue expenditure by merely following orders for earlier years;*

*2.2 That the Ld. CIT(A) failed to appreciate that the expenditure incurred did not result in creation of an asset of enduring nature while holding that the appellant has acquired an asset of enduring nature;*

*2.3 That the Ld. CIT(A) failed to appreciate that the scope of the agreement was limited to a particular territory and that the bottlers were free to carry on business and were in fact carrying on business in other territories;*

*2.4 That the Ld. CIT(A) erred in disallowing expenditure ignoring the settled legal position that the nomenclature used by an assessee in the books of account is not decisive of the fact that whether an expenditure is revenue or capital in nature;*

*2.5 Without prejudice to above, the Ld. CIT(A) erred in law in not allowing depreciation on the non-compete fee expenditure, held to be in the nature of capital expenditure;*

*2.6 The Ld. CIT(A) failed to appreciate that if the expenditure is considered as capital in nature constitutes an ‘intangible asset’ and accordingly eligible for depreciation.*

**3.0 Disallowance of expenditure incurred on ice boxes**

*3.1 That the Ld. CIT(A) erred in law in holding that expenditure incurred towards ice boxes provided to hawkers / dealers, carrying the brand name of the appellant, was capital in nature eligible for depreciation and not revenue expenditure as claimed;*

*3.2 That the Ld. CIT(A) failed to appreciate that similar claim was allowed by Ld. CIT(A) as revenue in nature in appellant's own case for AY 2004-05 and AY 2005-06."*

3. The first ground of appeal raised by the assessee is general in nature and does not require any adjudication.

4. The Ground of appeal Nos. 2 to 2.6 raised by the assessee is against the treatment of non-compete fee of Rs.50,64,83,985/- as capital expenditure. In the alternate vide Ground No.2.5, the assessee has raised that incase expenditure is held to be capital in nature then depreciation is to be allowed on the same.

5. Briefly in the facts of the case the assessee had claimed deduction of Rs.50,64,83,985/- as non-compete fee amortized. The assessee explained that during the year under consideration, it had acquired running business of various bottlers directly or through amalgamation. The non-compete fee was paid to the bottlers for not disclosing the confidential information relating to the business and for not competing in similar line of business in their respective territories for a period of five years. The assessee followed practice of charging amounts to P&L A/c on a pro-rata basis to be fully written off over the period of benefit. The Assessing Officer relying on the assessment order for Assessment Year 1999-2000 disallowed the claim of the assessee on the ground that it was an item of capital expenditure. The CIT(A) had upheld the said addition in Assessment Year 1999-2000. The Assessing Officer observed that the assessee by virtue of non-compete fee,

together with consideration for the purchase of the business, had acquired new business and the said payments were thus for the purpose of acquiring income generating business undertaking. The depreciation claimed on the said expenditure being capital was also denied by the Assessing Officer. The CIT(A) upheld the order of Assessing Officer against assessee which assessee is in appeal.

6. The Ld.AR for the assessee pointed out that the Tribunal in assessee's own case for Assessment Year 2002-03 decided both the issues against the assessee in turn following the ratio laid down by Hon'ble Delhi High Court in Sharp Business System vs CIT [2012] 211 taxman 576 (Del.). Hence, the order of Assessing Officer was upheld to the extent that the payment of non-compete fee was a capital expenditure and the assessee was not entitled to claim depreciation u/s 32 of the Act on the said capital expenditure. He further pointed out that the Hon'ble Delhi High Court in assessee's own case has admitted both issues as question of law and the same are pending for adjudication.

7. We have heard the rival contentions and perused the record. In view of the issue decided against the assessee by the Tribunal (supra), we uphold the order of the CIT(A) and hold that the payment of non-compete fee was capital expenditure in the hands of the assessee, on which the assessee is not entitled to claim depreciation u/s 32 of the Act. The Tribunal had relied on the decision of Jurisdictional High Court in the case of Sharp Business

System vs CIT (supra) and applied the same. We decide both the main issues and alternate grounds against the assessee. Admittedly the Hon'ble High Court in assessee's own case has admitted the issues for adjudication and the same are pending. Thus, Ground Nos.2 to 2.6 raised by the assessee are dismissed.

8. Now, coming to Ground of appeal Nos. 3 to 3.2 which is against the disallowance of expenses incurred on ice boxes provided to dealers. We find that the Tribunal (supra) while deciding the appeal of the assessee for Assessment Year 2002-03 vide para 2.3 held that the expenditure incurred on ice chests/ice boxes, pushcarts, dealer Sign board was made for acquiring or bringing into existence an asset for the enduring benefit of the business of the assessee and held the said expenditure to be capital in nature. However, the expenditure incurred on Electric Spectaculars, Neon Signs, Artwork, Glow Signs and Neon Signs was allowed as business expenditure. The Hon'ble High Court has also admitted the issue raised by the assessee as to whether expenditure incurred towards ice boxes and dealer sign board provided to hawkers/dealers carrying on brand names of the assessee was capital in nature.

9. The Ld.AR for the assessee pointed out that where the assessee was not in the ownership then the expenditure needs to be allowed as revenue expenditure. He placed reliance on the ratio laid down by the Hon'ble High Court in CIT vs Honda Siel Power Products Ltd. [2007] 300 ITR 56 (Del.).

He further stated that though the expenditure on ice boxes was disallowed in Assessment Year 2002-03 but no disallowance was made by the Assessing Officer on expenditure totaling Rs.8.91 crores (approx.) in Assessment Year 2003-04. Further, in Assessment Year 2004-05 though the Assessing Officer disallowed the expenditure of Rs.4.87 crores (approx.) but the CIT(A) had deleted the same and no appeal has been filed by the Revenue against the order of CIT(A). He further stressed in Assessment Year 2005-06, similar recurring expenditure for carrying on business was incurred and claimed as revenue expenditure amounting to Rs.5.10 crores (approx.), which was allowed.

10. The Ld. DR for the Revenue placed reliance on the orders of the authorities below and also the order of the Tribunal in assessee's own case for Assessment Year 2002-03.

11. We have heard the rival contentions and perused the record. The issue which arises in present ground is in respect of expenditure incurred by the assessee on ice boxes which were provided to the hawkers and on Signages. The said expenditure totaling to Rs.15,30,88,574/- was disallowed by the Assessing Officer. The plea of the assessee that the life of both Signages and ice boxes was very short and do not have any enduring benefit to the assessee but expenditure as revenue in nature were not accepted by the Assessing Officer. The CIT(A) allowed the claim of expenditure on Signages as revenue expenditure in view of the order of the

Tribunal in Assessment Year 2002-03. However, the expenditure incurred on ice boxes was held to be capital in nature being part of plant & machinery, eligible for depreciation at applicable rates. The assessee is in appeal on the same on the ground that the aforesaid ice boxes were not in possession of the assessee hence, not of enduring benefit to the assessee. The assessee explained that since the product sold by it were to be sold on particular temperature, the ice boxes were used by the hawkers for selling the items at aforesaid temperature.

12. The Hon'ble Delhi High Court in CIT vs Honda Siel Power Products Ltd. (supra) while deciding the issue of advances made for ownership of tools and dies which remained with the manufacturer, had allowed the same as revenue expenditure as it facilitated the trading operations of the assessee.

13. We further find that despite the non-allowance of expenditure in Assessment Year 2002-03, the Assessing Officer himself has allowed the expenditure in total amounting to Rs.8.91 crores (approx.) in Assessment Year 200-3-04 and Rs.4.87 (approx.) crores has been allowed in Assessment Year 2004-05 by the CIT(A) and Rs.5.10 crores (approx.) in Assessment Year 2005-06. In the totality of the above said facts and circumstances and following the consistency approach, we are of the view that the expenditure incurred on ice boxes, merits to be allowed as deduction in the hands of the

assessee. Hence, the claim of the assessee is allowed in entirety. Ground of appeal Nos. 3 to 3.2 raised by the assessee are thus allowed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27<sup>th</sup> April, 2020.

**Sd/-**

**(DR. B.R.R. KUMAR)**  
लेखा सदस्य/ACCOUNTANT MEMBER

**Sd/-**

**(SUSHMA CHOWLA)**  
उपाध्यक्ष/VICE PRESIDENT

दिल्ली / दिनांक Dated : 27<sup>th</sup> April, 2020

\* Amit Kumar \*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली  
Assistant Registrar, ITAT, Delhi