

2011-TIOL-555-HC-DEL-IT

IN THE HIGH COURT OF DELHI

ITA No.833 of 2011

COMMISSIONER OF INCOME TAX

Vs

M/s BONANZA PORTFOLIO LTD

A K Sikri and M L Mehta, JJ

Dated: August 10, 2011

Appellant Rep by: Mr. Deepak Chopra, Adv

Respondent Rep by: Mr. Rakesh Gupta, Adv for Ms. Poonam Ahuja and Ms. Rani Kiyala, Adv

Income Tax - Sections 32, 37 - Whether the expenditure incurred on ad film, website & advertisement is revenue expenditure - Whether the computer peripherals are entitled to depreciation @ 60%.

The assessee engaged in the business of stock broking and earning commission income from share transactions from clients being a member of the NSC and BSC. In the revised return, the assessee had amortized expenditure amounting to Rs. 1,15,16,377/- incurred on advertisements, ad films and website expenses over a period of 5 years. The department initiated scrutiny proceedings. The AO noted that the expenditure on advertisement, ad films and website expenses were in the nature of capital expenses since they resulted in the earnings to the assessee for a number of years and made additions. AO also disallowed depreciation claimed by the assessee @ 60% on computer peripherals like printers, scanners etc stating that the depreciation @ 60% was allowable only in the case of computers and computer software and was not applicable on computer peripherals. The CIT(A) allowed the Appeal on both the counts and the Tribunal confirms it.

On Appeal the HC held that,

++ as far as expenditure on advertisement is concerned, the said expenditure incurred on advertisements for sale promotion was of revenue in nature. With regard to the expenditure incurred on website, this Court holds the same to be of revenue in nature;

++ similarly, with regard to depreciation @ 60% on computer peripherals, the Court relies upon the judgment of this Court in CIT v Citicorp Maruti Finance Ltd. (ITA 1712/2010 and ITA 1714/2010) and held that the computer peripherals are entitled to depreciation @ 60%;

++ the observations of the Bombay High Court in CIT v Geoffrey Manners with which the Court is in complete agreement and which distinguish the case of Patel International would be suffice to arrive at the conclusion that the appellant being engaged in the business of stock broking and share transactions, the expenditure incurred on ad films by way of

advertisements for promotion and marketing of its products, being on the ongoing business, would be of revenue in nature and thus allowable as revenue expenditure.

Revenue's appeal dismissed

Cases followed:

CIT v Citi Financial Consumer Fin. Ltd. (2011-TIOL-309-HC-DEL-IT)

CIT v Indian Visit.Com (P) Ltd. (2008-TIOL-448-HC-DEL-IT)

CIT vs. Liberty Group Marketing Division (2008-TIOL-265-HC-P&H-IT)

CIT v Geoffrey Manners & Co. Ltd. (2009-TIOL-93-HC-MUM-IT)

JUDGEMENT

Per: M L Mehta:

1. The assessee company (respondent herein) is engaged in the business of stock broking and earning commission income from share transactions from clients being a member of the National Stock Exchange and Bombay Stock Exchange. It filed its original return of income declaring income of Rs. 8,19,15,021/- on 25th September, 2008. Thereafter, the revised return was filed on 20th May, 2008 declaring total income of Rs. 7,27,01,919/-. In the revised return, the assessee had amortized expenditure amounting to Rs. 1,15,16,377/- incurred on advertisements, ad films and website expenses over a period of 5 years. The department initiated scrutiny assessment proceedings and issued notice under Section 143(2) of the Income Tax Act, 1961 ("the Act" for short) on 16th September, 2008. The Assessing Officer (AO) proceeded to compute the assessment under Section 143(2) of the Act on a total income of Rs. 8,56,87,742/-. The AO noted that the expenditure on advertisement, ad films and website expenses were in the nature of capital expenses since they resulted in the earnings to the assessee for a number of years. Consequently, he computed income as per the original return where such an expenditure had been amortized for a period of five years. Resultantly, AO made additions of Rs. 92,13,102/- and made assessment on total income of Rs. 8,56,87,742/-. AO also disallowed depreciation claimed by the assessee @ 60% on computer peripherals like printers, scanners etc stating that the depreciation @ 60% was allowable only in the case of computers and computer software and was not applicable on computer peripherals. He accordingly disallowed the deduction of Rs. 341,313/- on this count. The assessee preferred an appeal before the CIT(A) which was allowed on both the counts. Consequently, CIT(A) deleted all the additions made by AO. Aggrieved with the order of CIT(A), the revenue preferred an appeal before ITAT which came to be dismissed vide impugned order dated 29th November 2010. The revenue is in appeal before us against the said order of the Tribunal.

2. Vide our order dated 11th July, 2011, we have at the previous stage held that as far as expenditure on advertisement is concerned, the said expenditure incurred on advertisements for sale promotion was of revenue in nature. In this regard we refer to our decision in ITA No.1820 of 2010 titled *The Commissioner of Income Tax v Citi Financial Consumer Fin. Ltd. (decided on 30th March, 2011) = (2011-TIOL-309-HC-DEL-IT)*. With regard to the expenditure incurred on website, we rely upon the judgment of this Court in *CIT v Indian Visit.Com (P) Ltd. 219 CTR (Del) 603 = (2008-TIOL-448-HC-DEL-IT)* and hold the same to be of revenue in nature. Similarly, with regard to depreciation @ 60% on computer

peripherals, we rely upon the judgment of this Court in *Commissioner of Income Tax v Citicorp Maruti Finance Ltd.* (ITA 1712/2010 and ITA 1714/2010 decided on 9th November 2010) and held that the computer peripherals are entitled to depreciation @ 60%.

3. Vide the said order dated 11th July, 2011, notice was issued to the respondent only to the limited question as to whether the expenditure incurred on ad film is to be treated as capital or revenue in nature.

4. We have heard the counsel for the parties on this issue. The assessee has placed reliance on the case of *CIT v Geoffrey Manners & Co. Ltd.* 315 ITR 134 (2009) = **(2009-TIOL-93-HC-MUM-IT)**; *CIT v Patel International Films Ltd.* 102 ITR 219. On the other hand, revenue has placed reliance on *CIT v Bose Corporation India Pvt. Ltd* (ITA No.1494 of 2010). We have perused the judgments cited by the parties. The case of Patel Engineering (supra) was also referred to and discussed in *CIT v Geoffrey Manners* (supra). The undermentioned observations of the Bombay High Court in *CIT v Geoffrey Manners* (supra) with which we are in complete agreement and which distinguish the case of Patel International (supra), would suffice to arrive at the conclusion that the appellant being engaged in the business of stock broking and share transactions, the expenditure incurred on ad films by way of advertisements for promotion and marketing of its products, being on the ongoing business, would be of revenue in nature and thus allowable as revenue expenditure.

5. In *CIT v Geoffrey Manners* (supra) in paras 3, 4 and 5, it was observed as under:

"The only ground based on which the Revenue has approached this Court is as pointed out earlier that the Tribunal ignored the ratio of the judgment in Patel International Film Ltd. (supra). We may point out, that on facts there the assessee company was in the business of processing and printing movie films in a processing and printing laboratory purchased by them. It subsequently purchased a film processor in the laboratory to serve as a model for exhibition to induce confidence in its customers by way of advertisement and claimed the amount spent on the purchase as business expenditure. After considering the facts a learned Bench of this Court noted as under:

"In other words, the asset that was acquired by the assessee company was a capital asset to be used for the purpose of advertisement of the business that the assessee company was going to carry on in future and, therefore, the expenditure will have to be regarded as a capital expenditure and not revenue expenditure."

It would, thus be clear that the machinery purchased was not in respect of an ongoing business of the assessee, but in respect of the business which was going to be carried out in the future.

In the instant case as the facts bear out, the advertisement was in respect of an ongoing business of the assessee herein.

4. A similar issue had come up for consideration before the Division Bench of the High Court of Punjab & Haryana in *CIT vs. Liberty Group Marketing Division* (2008) 8 DTR (P&H) 28 = **(2008-TIOL-265-HC-P&H-IT)**. In that case the assessee had claimed expenditure incurred on glow sign boards as also T.V. films. The expenditure was held to be revenue in nature.

5. In our opinion the correct test to be applied in such a case would be, that if the expenditure is in respect of an ongoing business of the assessee and there is no enduring

benefit it can be treated as revenue expenditure. If, however, and if it is in respect of business which is yet to commence then the same cannot be treated as revenue expenditure as expenditure is on a product yet to be marketed. Considering the above, in our opinion the judgment in Patel International Film Ltd. (supra) is clearly distinguishable. The CIT(A) and the Tribunal on the facts of this case were clearly within their jurisdiction in holding that the expenditure was by way of revenue expenditure as it was in respect of promoting ongoing products of the assessee herein."

6. In view of the aforesaid reasons, we find no merits in this appeal which is accordingly dismissed.