**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH: 'G' : NEW DELHI**

**BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER**
**AND**
**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No. 4278/Del/2010
Assessment Year: 2006-07

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| M/s Seagram Distilleries Pvt. Ltd.<br>104, Ashoka Estate,<br>Barakhanba Raod, New Delhi<br>(PAN:AAFCS3143N) | Vs. | Jt. Commissioner of Income Tax, Range-8, New Delhi |
| (Appellant) | | (Respondent) |

And

ITA Nos. 287 & 288/Del/2012
Assessment years: 2007-08 & 2008-09

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| M/s Seagram Distilleries Pvt. Ltd.<br>104, Ashoka Estate,<br>Barakhanba Raod, New Delhi<br>(PAN:AAFCS3143N) | Vs. | Deputy Commissioner of Income Tax, Circle 8(1), New Delhi |
| (Appellant) | | (Respondent) |

And

ITA Nos. 5178/Del/2010
Assessment Years: 2006-07

| | | |
|---|---|---|
| ACIT, Circle 8(1),<br>Room No. 163,<br>C.R. Building, New Delhi | Vs. | M/s Seagram Distilleries Pvt. Ltd.<br>104, Ashoka Estate,<br>Barakhanba Raod, New Delhi<br>(PAN:AAFCS3143N) |
| (Appellant) | | (Respondent) |

And

ITA Nos. 1845 & 1846/Del/2012
Assessment years: 2007-08 & 2008-09

| | | |
|---|---|---|
| Asstt. Commissioner of Income Tax, Central Circle-19,<br>Room no. 319, ARA Centre<br>E-2, Jhandelwalan Extn.,<br>New Delhi. | Vs. | M/s Seagram Distilleries Pvt. Ltd.<br>104, Ashoka Estate,<br>Barakhanba Raod, New Delhi<br>(PAN:AAFCS3143N) |
| (Appellant) | | (Respondent) |

Assessee by : Sh. Deepak Chopra, Adv. & Sh. Aditya Gupta, CA
Department by: Sh. Ramesh Chandra, CIT(DR)

Date of hearing: 28.04.2015
Date of pronouncement: 10.07.2015

**ORDER**

**PER INTURI RAMA RAO, A.M.:**

These are the cross appeals filed by the assessee as well by the Revenue for the assessment years 2006-07 to 2008-09 impugning the orders of learned CIT(A) passed in respective assessment years. The assessee has filed ITA Nos. 4278/Del/2010, 287/Del/2012, 288/Del/2012 and the Revenue has filed ITA Nos. 5178/Del/2010, 1845/Del/2012 & 1846/Del/2012**.** Since common issues are involved, the appeals are disposed of by consolidated order.

2. We shall now take up the assesseeôs appeals for the assessment year 2006-07 to 2008-09.

## ITA Nos. 4278/Del/2010 for AY 2006-07, 287/Del/2012 for AY 2007-08 & 288/Del/2012 for AY 2008-09

3. The grounds of appeal raised by the assessee in ITA No. 4287/Del/2010 are as follows:

i. That the order of the Commissioner of Income Tax (Appeals) {CIT(A)} in so far as in prejudicial to the appellant, is bad in law and deserves to be set aside.
ii. That the ld. CIT(A) grossly erred in law in not allowing the brand registration expenses of Rs. 1,279,500/- as revenue expenditure for the year under consideration and in limiting the allowance of such expenditure only to 1/5$^{th}$ of such expenditure.

iii. That the ld. CIT(A) grossly erred in law in holding such brand registration expenses to be capital in nature and holding that on account of such expenses the assessee would continue to derive benefit over a number of years.

iv. That the ld. CIT(A) completely erred in not appreciating that the assessee was mandatorily required to register its brand under in various states every year in order to sell in such states and there was no enduring benefit which arose from such expenditure.

v. That the ld. CIT(A) grossly erred in sustaining the addition of Rs. 1,401,233/- on account of provision for transit breakages.

vi. That the ld. CIT(A) grossly erred on facts in not appreciating that the breakages were bound to happen in transit since the appellants products were transported in glass bottles which were brittle in nature.

vii. That the ld. CIT(A) gravely erred in not appreciating that the assessee had incurred actual breakages of Rs. 777,413/- which should have in any case been allowed.

viii. That the ld. CIT(A) gravely erred in concluding that the accounting approach of the assessee was a colourable device made in circumvent the provisions of law.

ix. That the ld. CIT(A) completed erred in not undertaking the basic issue relating to the creation of the provision and also completely failed to appreciate that as per the accounting standards notified under Section 145(2) of the Act the assessee was required to make a provision for all known liabilities and losses.

x. That the ld. CIT(A) also erred in not appreciating that the provision for transit breakages was made in respect of the losses which were normally incurred in the transportation of the liquor bottles by road to various locations and it was for this breakages that a provision was made by the assessee on the basis of its past experience.

xi. The ld. CIT(A) grossly erred on facts and in law in limiting the allowance of brand expenses amounting to Rs. 101,610,577/- to only $1/5^{th}$ of such expense for the year under consideration.

xii. That the ld. CIT(A) grossly erred in concluding that such brand expenses resulted in an enduring benefit arising to the assessee and hence were capital in nature.

xiii. That the ld. CIT(A) also erred in concluding that the nature of such expenditure would disentitle it to claim the entire expenditure in one year only.

xiv. That the ld. CIT(A) erred on facts and in law in concluding that benefit from expenditure on advertisement and sales promotion is not confined to any particular year but extends in subsequent years also.

xv. That the ld. CIT(A) completed erred on facts in not appreciating that the benefit derived by the appellant from expenditure incurred on advertisement and sales promotion was extremely uncertain since brands

and preferences change all the time and to hold the attention and preference of the consumer these expenses have to be incurred repeatedly.

xvi. That the appellant reserves its right to add, alter, amend, or modify any ground of appeal either before or at the time of hearing of this appeal.

4. The similar grounds were raised for the other assessment years, namely, 2007-08 and 2008-09.

5. Facts in brief are that the appellant is a company incorporated under the Companies Act, 1956. It is a subsidiary of Pernod Ricard India Pvt. Ltd. (PRIPL), Barakhamba Road, New Delhi and the main holding company is Pernod Ricard SPA France. The appellant is engaged in the business of manufacturing and sale of grain neutral spirit (GNS). The appellant filed its return of income on 30.11.2006 declaring total income at Rs. 1,18,85,38,845/-. The return was processed under section 143(1) of the Income-tax Act, 1956 (for short ñthe Actò) and thereafter the case was selected for scrutiny. The assessment was completed on 16.12.2009 under Section 143(3) of the Act at a total income of Rs. 1,29,53,57,400/- after making several disallowances to the tune 10,68,18,564/-, addition on account of provision of transit breakage Rs. 14,01,233/-, on account of depreciation Rs. 25,27,254/-, on account of brand registration Rs. 12,79,500/- and on account of brand expenses Rs. 10,16,10,577/-. Being aggrieved, appeal was preferred by the appellant before the CIT(A)-XI, New Delhi, who vide order dated 16th August, 2010 partly allowed the appeal. Hence, the appellant come before us with the present appeal.

6. We shall now deal with the appeal filed by the assessee ground-wise.

7. The appellant has raised as many as four grounds of appeal. Ground no. 1 is general in nature and therefore does not require adjudication.

8. Ground no. 2 is pertaining to disallowance of brand registration expenses of Rs. 12,79,500/- for AY 2006-07, Rs. 17,43,500/ for AY 2007-08 and Rs. 7,89,500/- for AY 2008-09. The brief facts relating to the ground of appeal are as follows:

8.1 The appellant had claimed the above expenditure incurred on account of registration of brand in the several states. It was explained before the Assessing Officer that these expenses were incurred for registering the brands in each of the States in which the assessee sold its products and these registrations were to be renewed (as per the State Excise Policy) every year. The Assessing Officer disallowed the claim holding that the expenditure is in the nature of capital as the benefit of the brand can be reaped for a period of time. On appeal before the CIT(A), the CIT(A) held that the benefit of expenditure would spread over for a period of time and therefore he allowed 1/5$^{th}$ of the expenditure for the year under consideration and the spread over the balance amount for a period of four succeeding years was allowed. Aggrieved by this decision, the appellant had raised the present ground.

8.2 During the course of hearing before us, the learned counsel has drawn our attention to page 32 and 34 wherein the details of expenditure along with the documentary evidence in support of the same were placed. From the perusal of details, it is clear that this expenditure has to be incurred every year in order to register the brands of the products being sold by the appellant in every States as

per the Excise Policy of every State. It is a purely recurring expenditure and does not result in creation of an asset or benefit of enduring nature. It is also pointed out that this Tribunal for the assessment year 2002-03 allowed this claims as revenue expenditure. The relevant paragraphs of the Tribunalôs order are reproduced below:

ñ12 In assesseeôs appeal for assessment year 2002-03, the other dispute is with regard to disallowance of Rs. 2 lakhs on account of brand registration expenses. The assessee incurred a sum of Rs. 3,90,000/- on brand registration expenses which was disallowed by the Assessing Officer on the ground that they were capital in nature. The CIT(Appeals) however noted that these expenses were for fees required to be paid for as per state excise law for registration of the brand and allowed a sum of Rs. 1,90,000/- by holding the same as revenue in nature. He, however, confirmed a disallowance of Rs. 2 lacs since the receipts for such amount had not been produced.
13. Before us also, the assessee has not produced any evidence. In these circumstances, we uphold the disallowance and the order of the CIT(Appeals). Accordingly, this ground is dismissed.ò

8.3 Respectfully following the decision of this Tribunal in the appellantôs own case for the assessment year 2002-03, we allow this ground of appeal filed by the assessee.

9. Ground no. 3 relates to the disallowance of provision for transit breakages of Rs. 14,01,233/- for AY 2006-07, Rs. 27,74,953/- for AY 2007-08 and Rs. 17,39,806/- for AY 2008-09. During the years under consideration, the appellant claimed aforesaid amounts as provision for transit breakages and shortages. It was explained during the course of assessment proceedings that the transit breakage and shortage represented the losses which occurred during transportation of goods from factory to destination. During the financial year, provision for such breakage/shortage was made on month to month basis.

However, once the goods reach their destination the provision was reversed and only actual breakage was debited to the profit and loss account. It is further submitted that as provision for transit breakages had been made on the basis of actual breakages and shortages, which had occurred in respect of similar transactions entered into earlier in earlier years in the said regions/States, the provision was on a scientific basis and based on the past experience of the assessee. However, the Assessing Officer felt that the breakages may or may not occur and making provision for the same amounts to provision for contingent liability and therefore disallowed the same. On appeal before the CIT(A), following the Tribunalôs order for the assessment year 2004-05 confirmed the disallowances. The relevant paragraphs of the Tribunalôs order are reproduced below:

ñWe have heard the parties and considered the rival submissions, the assessee had given details for provision of transit breakage as under:

| A.Y. | Total amount debited to Transit Breakage & Shortage Account | Actual | Provision | Provision reserved in next year | Addition made by the Assessing Officer | Remarks |
|---|---|---|---|---|---|---|
| 2001-02 | 640,338 | 2,874 | 637,464<br><br>637,464 | | 640,338 | |
| 2002-03 | 1046,164 | 533,376 | 236,500<br>276,288<br>512,788 | 637,464<br>_____<br>637,464 | 512,788 | Earlier year provision being reversed in account head ñOther VBDò |
| 2003-04 | 2560,802 | 1945,425 | 27,112<br>427,487<br>364<br>673,566<br>1128,529 | 276,288<br>236,500<br><br>_____<br>512,788 | 615,377 | |
| 2004-05 | 4275,111 | 4027,830 | 371,755<br>30,500<br>300,000 | 427,851<br>27,112<br>673,566 | 247,281 | During the year a provision of Rs. 702,244 has been |

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| | | | 702,244 | 1128,529 | | created and a reversal of Rs. 1,128,529 pertaining to the assessment year 2003-04 has been made. The Assessing Officer has wrongly made an addition of Rs. 247,281 without giving the credit of Rs. 673,281 relating to assessment year 2003-04 reversed in the current year. No addition ought to have been made since the figure of reversal is higher that the figure of provision made during the year. |

The assessee is new in the business, therefore, cannot have any basis on its own experience of break-up. On a perusal of the chart aforesaid, we however find that the provision is without any basis much less the scientific one. This is evident by the fact that the assessee itself has reversed the provision on the first day of next year. In any case, even the expenditure claimed by the assessee stood at Rs. 2,874/- only as against the provision made by the assessee at Rs. 6,40,338/-. In the assessment year 2002-03, as against the provision of Rs. 10,46,164/- the actual expenditure was Rs. 5,33,376/-, in assessment year 2003-04 the expenditure was Rs. 19,45,425/- as against the provision of Rs. 25,60,802/- and in assessment year 2004-05, the expenditure was Rs. 40,27,830/- as against the provision of Rs. 42,75,111/-. In each year, the provision is excessive. It may also be noted that the assessee came into existence in these years and has no experience of its own to enable it to estimate the expenditure to make the provision on scientific basis. The contention of the learned counsel of the assessee that the provision was made on the experience of sister concern which was in the same line of business for pretty long time has no legs to stand. The reference of details of transit breakage, as found in annexure - 2 of the order of the CIT(Appeals) in assessment year 2002-03, shows that a provision is made on some ad-hoc basis per case on the basis of places of destination, i.e., in case of Andhra Pradesh the rate is Rs. 10 per case, in case of Goa it is Rs. 15 per case and in the case of Karnataka it is Rs. 15 per case. How the amount of Rs. 10 or Rs. 15 per case arrived at is anybodyôs guess. In any case, this chart also does not show as to on what experience it was determined that the rate of breakage in rupees would be Rs. 10, Rs. 9.5 and Rs. 15 in respect of these three places. Again this provision is based from first day of the accounting year till the last day of the accounting year whereas the breakage is known within a period of 15 to 30 days and which, as stated in the earlier chart, was much less than the provision cannot be said to be based on any scientific

basis nor on actual experience of the assessee or its sister concern. In the circumstances the provision cannot be allowed as a deduction.

10. The reliance by the assessee on the judgment of Bharat Earth Movers Vs. CIT, 245 ITR 428 (SC) and the Special Bench decision of Calcutta Bench of the Tribunal in the case of JCIT Vs. ITC Ltd., 299 ITR 341 (SB) cannot be of any help to the assesee as in all these the provision was made on a scientific basis based on the experience of the assessee.

11. We accordingly reverse the order of the CIT(Appeals) in the appeal for assessment year 2001-02 on this issue and uphold the disallowance and his orders in the appeals for assessment years 2002-03 to 2004-05.ò

9.1 From the above it is clear that this Hon'ble Tribunal had confirmed the disallowance only on the ground that there was no basis for making provision for transit breakages. The Tribunal had no benefit of the decision of Hon'ble Supreme Court in the case of Rotrok Controls (India) Pvt. Ltd. Vs., 314 ITR 62 (SC). It is undisputed that the provision was made based on the dispatch of goods to various destinations on the basis of past experience. The crucial facts to be taken into consideration that the provision made on the dispatch of goods is reversed the moment the goods reached the destination only actual breakages are charged to P&L account. It is only in respect of the goods which are under dispatch at the year end the provision was created. This shows that the amount debited to P&L account represents mostly actual breakages and this system of accounting is being followed continuously by the appellant. The Hon'ble Apex Court in the case of Rotrok Controls (India) Pvt. Ltd. (supra) held as follows vide para 18:

*"At this stage, we once again reiterate that a liability is a present obligation arising from past events, the settlement of which is expected to result in an outflow of resources and in respect of which a reliable estimate is possible of the amount of obligation. As stated above, the case of Indian Molasses Co. [1959] 37 ITR 66 (SC) is different from the present case. As stated above, in the present case we are concerned with an army of items of sophisticated*

*(specialised) goods manufactured and sold by the assessee whereas the case of Indian Molasses Co. [1959] 37 ITR 66 (SC) was restricted to an individual retiree. On the other hand, the case of Metal Box Company of India [1969] 73 ITR 53 (SC) pertained to an army of employees who were due to retire in future. In that case the company had estimated its liability under two gratuity schemes and the amount of liability was deducted from the gross receipts in the profit and loss account. The company had worked out its estimated liability on actuarial valuation. It had made provision for such liability spread over to a number of years. In such a case it was held by this Court that the provision made by the assessee-company for meeting the liability incurred by it under the gratuity scheme would be entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The same principle is laid down in the judgment of this Court in the case of Bharat Earth Movers[2000] 245 ITR 428. In that case the assessee company had formulated leave encashment scheme. It was held, following the judgment in Metal Box Company of India [1969] 73 ITR 53 (SC), that the provision made by the assessee for meeting the liability incurred under leave encashment scheme proportionate with the entitlement earned by the employees, was entitled to deduction out of gross receipts for the accounting year during which the provision is made for that liability. The principle which emerges from these decisions is that if the historical trend indicates that large number of sophisticated goods were being manufactured in the past and in the past if the facts established show that defects existed in some of the items manufactured and sold then the provision made for warranty in respect of the army of such sophisticated goods would be entitled to deduction from the gross receipts under section 37 of the 1961 Act. It would all depend on the data systematically maintained by the assessee. It may be noted that in all the impugned judgments before us the assessee(s) has succeeded except in the case of Civil Appeal Nos. 3506 to 3510 of 2009-arising out of SLP(C) Nos. 14178-14182 of 2007-Rotork Controls India (P) Ltd. vs. CIT, in which the Madras High Court has overruled the decision of the Tribunal allowing deduction under section 37 of the 1961 Act. However, the High Court has failed to notice the "reversal" which constituted part of the data systematically maintained by the assessee over last decade."*

9.2 Even the Hon'ble Jurisdictional High Court in the case of CIT Vs. Insilco Ltd., 320 ITR 322, held as follows:

*"Having heard the learned counsel for the Revenue as well as the assessee, we are of the view that no fault can be found with the reasoning of both the CIT(A) as well as the Tribunal. In our view, the issue raised by the Revenue before us that the liability under the "long service award" scheme of the assessee is*

*contingent as the payment under the same scheme is dependent on the discretion of the management is a submission which deserves to be rejected at the threshold. It is well settled that if a liability arises within the accounting period, the deduction should be allowed though it may be quantified and discharged at a future date. Therefore, the provision for a liability is amenable to a deduction if there is an element of certainty that it shall be incurred and it is possible to estimate the liability with reasonable certainty even though the actual quantification may not be possible as such a liability is not of a contingent nature. See Bharat Earth Movers vs. CIT [2000] 245 ITR 428. The principles enunciated above have been applied by the Supreme Court also in the case of Metal Box Company of India Ltd. Vs. Their Workmen [1969] 73 ITR 53 wherein the Supreme Court was considering the question whether estimated liability under gratuity schemes were amenable for deduction from gross receipts shown in the profit and loss account. The observation of the Supreme Court being pertinent are extracted herein below (page 67):-*

> *"But the contention was that though Schedule VI to the Companies Act may permit a provision for contingent liabilities, the Income Tax Act, 1961, does not, for unde Section 36(v), the only deduction from profits and gains permissible is of a sum paid by an assessee as an employer by way of his contribution towards and approved gratuity fund created by him for the exclusive benefits of his employees under an irrevocable trust. This argument is plainly incorrect because Section 36 deals with expenditure deductible from out of the taxable income already assessed and not with deductions which are to be made while making the P. & L. Account. In our view, an estimated liability under gratuity schemes such as the ones before us, even if it amounts to a contingent liability and is not a debt under the Wealth Tax Act, if properly ascertainable and its present value is fairly discounted is deductible from the gross receipts while preparing the P. & L. Account. It is recognised in trading circles and we find no rule or direction in the Bonus Act which prohibits such a practice."*

*6. In the case of Shree Sajjan Mills Ltd (supra), the Supreme Court was examining the provision made by the assessee towards gratuity under the Income Tax Act, 1961. The Supreme Court, after noticing the judgment in Metal Box Company of India Ltd. Vs. Their Workmen [1969] 73 ITR 53, crystallized its analysis at page 599 and made the following observations:-*

> *"It would thus be apparent from the analysis aforesaid that the position till the provisions of section 40A(7) were inserted in the Act in 1973 was as follows:-*
>
> *5 Provision made in the profit and loss account for theestimated present value of the contingent liability properly ascertained and discounted on an accrued basis as falling on the assessee in the year of*

*account could be deductible either under Section 28 or section 37 of the Act."*

*7. The Division Bench of this Court, while considering deductibility of a provision for warranties made by an assessee, which dealt in computers in the case of CIT Vs. Hewlett Packard India (P) Ltd. [2008] 314 ITR 55 (Del.), by its judgment passed in Appeal No. ITA 486/2006 dated 31.03.2008, upheld the deductibility of the provision for warranty on the ground that it was made on the basis of actuarial valuation being covered by the principle set out in Metal Box Company of India Vs. Their Workmen [1969] 73 ITR 53. In view of the aforesaid decisions and given the fact that the provision was estimated based on actuarial calculations, we are of the opinion that the deduction claimed by the assessee had to be allowed. We find no fault with the reasoning of the Tribunal. No substantial question of law arises for our consideration."*

9.3 The principle that emerges from the above decisions is that if the provision is made on scientific basis and can be estimated such provision can be allowed as a deduction. Applying this principle to the facts of the case, even in this case the provision was made based on past experience and the actual damages were taken into account immediately after the goods reached the destination which means that the provision was made only in respect of goods which were under dispatch as at the end of the year. This provision was made based on the past experience. Therefore, the provision had been made on some basis. Therefore, based on the ratio laid down in the above cases, the provision is allowable as a deduction.

10. Ground no. 4 relates to restricting the allowance of brand expenses to the tune of Rs. 10,16,10,577/- to only 1/5$^{th}$ of such expenses for AY 2006-07, Rs. 11,48,67,170/- for AY 2007-08 and Rs. 7,34,56,093 for AY 2008-09. In the profit and account, the appellant debited an amount of Rs. 30,18,52,870/- under the head advertising, sales promotions and rebates. Out of the same the appellant

had shown expenses of Rs. 10,16,10,577/- as brand expenses. The appelant explained that these expenses were incurred for advertising, sales promotion, cost and distribution etc. The Assessing Officer held that the brand expenses were incurred for enhancing the image of the brand and as such it was resulting in an enduring benefit. Therefore, he disallowed the same holding to be capital expenditure. On appeal before the CIT(A), the CIT(A) held that although the expenditure was in the nature of event management, business promotion expenses etc. the same would result in an enduring benefit to the appellant. He accordingly spread the expenses over a period of 5 years and allowed only 1/5 of the total expenditure for the year under consideration.

10.1 Before us, the learned counsel argued that the expenditure was in the nature of advertising and sales promotion of the products being sold by the appellant and the expenditure has not resulted in creation of new asset. The test of enduring benefit cannot be alone applied to determine whether the expenditure is revenue or capital. He placed reliance on the following decisions:

1. Empire Jute Company, 124 ITR 1 (SC),
2. CIT Vs. Berger Paints (India) Ltd., 254 ITR 503, (Cal.),
3. CIT Vs. Vs. Adidas India Marketing Pvt. Ltd., 195 Taxman 256 (Del.),
4. Addl. Comm. Vs. Delhi Cloth and General Mills, 144 ITR 280 (Del),
5. DCM Vs. CIT, 198 ITR 500 (Del.),
6. The Commissioner of Income Tax Vs. Citi Financial Consumer Financial Ltd., 335 ITR 29 (Del.),
7. CIT Vs. India Visit.Com (P) Ltd., 2019 CTR 603 (Del.),
8. Nestle India Vs. Dy. CIT, 11 TTJ 498 (Del.)
9. CIT Vs. Spice Distribution Ltd., ITA No. 597/2014, dated 19.09.2014 (Delhi H.C.),
10. Sony India Pvt. Ltd. Vs. DCIT, [2008] 114 ITD 448 (Del.),
11. CIT Vs. Modi Revlon Pvt. Ltd., [2012] 26 taxmann.com 133 (Del.),
12. CIT Vs. Monto Motors Ltd., [2012] 19 taxmann.com 57 (Del.),
13. CIT Vs. Salora International Ltd., [2009] 308 ITR 199 (Del.)

10.2 On the other hand, learned DR placed reliance on the order of the Assessing Officer.

10.3 We have heard the rival submissions and perused the details of the expenditure incurred placed at pages no. 76 to 79 of the paper book. From the details, it is clear that the expenditure is incurred only towards sales promotion and on advertisement issued. The issue whether the advertisement expenditure is revenue or capital is adjudicated by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Monto Motors, 206 TAXMAN 43 (Del.) vide para 4, which is reproduced below:

ñ*Advertisement expenses when incurred to increase sales of products are usually treated as a revenue expenditure, since the memory of purchasers or customers is short. Advertisements are issued from time to time and the expenditure is incurred periodically, so that the customers remain attracted and do not forget the product and its qualities. The advertisements published/displayed may not be of relevance or significance after lapse of time in a highly competitive market, wherein the products of different companies compete and are available in abundance. Advertisements and sales promotion are conducted to increase sale and their impact is limited and felt for a short duration. No permanent character or advantage is achieved and is palpable, unless special or specific factors are brought on record. Expenses for advertising consumer products generally are a part of the process of profit earning and not in the nature of capital outlay. The expenses in the present case were not incurred once and for all, but were a periodical expenses which had to be incurred continuously in view of the nature of the business. It was an on-going expense. Given the factual matrix, it is difficult to hold that the expenses were incurred for setting the profit earning machinery in motion or not for earning profits."*

10.4 Following the above ratio laid down by the Hon'ble Jurisdictional High Court, we allow this ground of appeal filed by the assessee.

10.5 Hence the appeal filed by the assessee company is allowed.

**ITA No. 5178/Del/2010 for AY 2006-07, 1845/Del/2012 for AY 2007-08 & 1846/Del/2012 for AY 2008-09.**

11. Now, we shall deal with the appeal filed by the Revenue for the assessment year 2006-07. The grounds of appeal raised by the Revenue in ITA No. 5178/Del/2010 are reproduced as under:

i. On the facts and circumstances of the case the Ld. CIT(A) erred in law as well as on merits in deleting the addition of Rs. 25,27,254/- made by the AO on account of excessive depreciation claimed by the assessee.
ii. On the facts and circumstances of the case the Ld. CIT(A) erred in law as well as on merits in holding that spreading over five years of brand registration expenses resulting in enduring benefit is in conformity with the specific provisions of the Act, which the AO held the brand registration expenses as capital expenditure.
iii. On the facts and circumstances of the case the Ld. CIT(A) erred in law as well as on merits in direction the AO to allow 1/5$^{th}$ of the brand registration expenses i.e. Rs. 2,55,900/- for the period under consideration and to disallow balance amount of Rs. 10,23,600/- which could be spread over by the appellant for the four successive years subject to other provisions of the Act.
iv. On the facts and circumstances of the case the Ld. CIT(A) erred in law as well as on merits in holding that spreading over five year of brand expenses resulting in enduring benefit is in conformity with the specific provisions of the Act, while the AO held the brand expenses as capital expenditure.
v. On the facts and circumstances of the case the Ld. CIT(A) erred in law as well as on merits in directing the AO allow 1/5$^{th}$ of the brand expenses i.e. Rs. 2,03,22,115/- for the period under consideration and to disallow balance amount of Rs. 8,12,88,462/- which could be spread over by the appellant for the four successive years subject to other provisions of the Act.
vi. The appellant craves to amend modify, alter, add, or forego any ground of appeal at any time before or during the hearing of this appeal.

12. The first ground raised by the Revenue is pertaining to restricting the claim of depreciation on account of reducing WDV on account of not claiming depreciation in the assessment year 2000-01. The assessee claimed depreciation of Rs. 25,27,254/- for AY 2006-07; Rs.21,68,161/- for AY 2007-08 and Rs.

18,61,471/- for AY 2008-09. The Assessing Officer adopted WDV after notionally allowing the depreciation for the years in which no claim for depreciation was made. On appeal before CIT(A), the claim for depreciation was allowed placing reliance on the decision of Hon'ble Tribunal in the assessee's own case in ITA No. 2532/Del/2006, dated 16th March, 2009. Against this, the Revenue is in appeal before us.

12.1 It was submitted before us that the issue is no longer res integra as the Hon'ble Delhi High Court in the assessee's own case in the preceding year allowed the appeal in ITA Nos. 1261 of 2009 & 1259 of 2009 by holding as follows:

*"6. We are of the opinion that the approach of the authorities below is correct having regard to the judgment of the Supreme Court in the case of ITR Vs. Mahendra Mills, 243 ITR 56 holding that since the depreciation for the assessment year 2001-02 was not actually claimed, there was no justification to reduce the written down value by the amount on hypothetical depreciation. Matter would have been different had the Assessing Officer in the assessment proceedings for the assessment year 2000-01 actually granted depreciation to the assessee, may be forced depreciation without there being a claim by the assessee. Without giving such a benefit to the assessee by allowing depreciation in the previous year, there was no justification in reducing the value on the fixed assets.*

*We, thus, are of the view that no question of law arises and, therefore, dismissed this appeal."*

12.2 Therefore, we respectfully follow the decision of Hon'ble Delhi High Court and dismiss this ground of appeal filed by the Revenue.

13. The ground nos. 2 and 3 of appeal relates to challenging the direction of CIT(A), allowing 1/5th of brand registration expenses of Rs. 12,79,500/- for AY 2006-07; Rs. 17,43,500/- for AY 2007-08; and Rs. 7,89,500/- for AY 2008-09.

In the assesseeôs appeals, we held that the entire expenditure incurred in connection with the brand registration expenses is revenue in nature. Hence, these grounds of appeal filed by the Revenue are also dismissed.

14. The ground nos. 4 & 5 relates to challenging the direction of CIT(A). allowing 1/5th of brand expenses of Rs. 10,16,10,577/- for the AY 2006-07, Rs. 11,48,67,170/- for AY 2007-08; and Rs. 7,34,56,093/- for AY 2008-09. In the assesseeôs appeal we held that the entire expenditure incurred in connection with the brand expenses are allowable as revenue. Hence, these grounds of appeal filed by the Revenue are also dismissed. Accordingly, the appeals filed by the Revenue are dismissed.

15. In the result, the appeals filed by the assessee are allowed and the appeals filed by the Revenue are dismissed.

The decision is pronounced in the open court on 10th July, 2015.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(I.C. SUDHIR)** | **(INTURI RAMA RAO)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 10th July, 2015.
RK/-
DCOM
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi