



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITAs No.1526/2010 & 1531/2010**

% **Date of Decision: 01.04.2011**

ITAs No.1526/2010

Commissioner of Income Tax, IV **APPELLANT**
Through: Mr.Kamal Sawhney, Sr. Standing
 Counsel.

Versus

M/s.Hindustan Coca Cola Marketing **RESPONDENT**
Co. Pvt. Ltd.
Through: None.

AND

ITAs No.1531/2010

Commissioner of Income Tax, IV **APPELLANT**
Through: Mr.Kamal Sawhney, Sr. Standing
 Counsel.

Versus

M/s.Hindustan Coca Cola Beverages **RESPONDENT**
Pvt. Ltd.
Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether reporters of Local papers be **NO**



- allowed to see the judgment?
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

A.K. SIKRI, J. (ORAL)

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1. The issue involved in both the appeals is common, which pertains to two assessment years. The Assessing Officer had passed assessment orders, which inter alia allowed deductions to the assessee in respect of service charges paid by the assessee on distribution, marketing, technical and operating matters, etc. treating the same as Revenue in nature. Likewise, the Assessing Officer had also allowed expenditure on account of advertisements, publicity and sales promotion treating the same as business expenditure. The orders of the Assessing Officer were revised by the Commissioner of Income Tax in exercise of its power under Section 263 of the Income Tax Act (hereinafter referred to as "the Act"), as the Commissioner was of the view that the Assessing Officer had not considered the matters in detail and there was a possibility that the expenditure incurred on both the aforesaid counts gave enduring benefit to the assessee and, therefore, should have been amortized treating the same as capital in nature. We may note that before the



Commissioner of Income Tax, the assessee had taken a specific plea that the expenditure incurred were revenue in nature. It was also stated that the matter was examined at length by the Assessing Officer, who had even sought for details of the service charges as well as advertisement expenditure during the course of assessment proceedings, which was duly provided by the assessee. The copies of the letters vide which the information was provided were also enclosed by the assessee in reply to the notice given by the Commissioner of Income Tax. The Commissioner, however, did not accept the plea and observed as under:-

- “3.1 The issue regarding the nature and purpose of service charges and its allowability as revenue expenditure has not been examined properly by the Assessing Officer. The assessee’s reply shows that service charges are paid for advisory and support services which appear to give an enduring benefit to the assessee. The Assessing Officer is directed to re-examine the details of the service charges and decide the issue in accordance with law specifically determining whether advantage of enduring nature bringing longterm benefits to the assessee is created by incurring the expenditure.”
- 3.2 Regarding advertisement, publicity and sales promotion expenses also, it is found that although details were submitted before the Assessing Officer which has not been properly examined from the point of view of capitalization as these appear to provide enduring benefit to the assessee.”



2. It is clear from the above that only on the ground that the Assessing Officer had not properly examined the expenditure, the Commissioner directed the Assessing Officer to re-examine it. The plea of the assessee that assessee had furnished the details of these expenses, which was considered by the Assessing Officer before allowing the same as Revenue expenditure is not even controverted. The Commissioner, in his wisdom, thought that the expenditure incurred on the aforesaid count appears to be capital in nature as it gives an enduring benefit to the assessee. Even the Commissioner was not categorical about the nature of expenditure and that is the reason that he remitted the case back to the Assessing Officer to re-examine the details. It is stated at the cost of repetition that the statement of the assessee that the matter was duly examined by the Assessing Officer on the basis of non-supply by the assessee, who had satisfied himself that the expenditure was incurred for smooth running of its day-to-day business and has not resulted in the creating of any asset or benefit of enduring nature was not even controverted by the Commissioner. Thus, merely because the Commissioner has mainly been influenced that by the fact that there may be other view possible, the Commissioner could not have exercised his power under Section 263 of the Act on that basis alone. In these circumstances, the



Income Tax Appellate Tribunal rightly set aside the orders of the CIT(A) in the following manner:

“We have carefully considered the submissions. We find that as rightly pointed out by the Id. Counsel of the assessee, information on all the issues and the details were submitted before the Assessing Officer by way of submissions by the assessee, pursuant to the notice under Section 143(2) of the Act. Admittedly, after perusal of these details, the Assessing Officer did not find that the expenditure were capital in nature. Hence he did not make any disallowance in the assessment order on account of capital expenditure in this regard. Now the Id. CIT’s conclusion is that these expenditures might have been capital in nature. The Assessing Officer has not properly examined the same. We do not find any cogent basis for this conclusion. Seeking the details of expenditure from the assessee and assessee’s submissions are sufficient evidence in this regard that AO had examined the issue and after due examination the Assessing Officer did not find the expenditure to be capital in nature. It cannot be said there was no proper application of mind by the Assessing Officer. If in the CIT’s opinion these expenditures might have been capital in nature then it can be said that two views are possible on the issue. Under such circumstances, if the Assessing Officer has adopted one of the views then held by the Apex Court decision in the case of Mallabar industrial Co. Ltd. cited above, provisions of Section 263 are not attracted. Although, we find that there is no basis whatsoever for the Id. CIT to form the opinion that any expenditure in this regard might have been capital in nature. This is purely an assumption by the Id. CIT. Hon’ble M.P. High Court decision in Ratlam Coal Ash Co. case cited above also supports our view.”



3. We do not find any merit in these appeals. No question of law arises. The appeals are dismissed.

A.K. SIKRI, J.

APRIL 01, 2011
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M.L. MEHTA, J.