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

Date of decision: September 19, 2014

\+ **ITA No. 597/2014**

COMMISSIONER OF INCOME TAX-III

..... Appellant

Through: Ms.Suruchi Aggarwal,
Sr.Standing Counsel

versus

M/S. SPICE DISTRIBUTION LTD.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V.KAMESWAR RAO

SANJIV KHANNA, J. (Oral)

1. The present appeal by the revenue relates to the Assessment Year 2009-10 and impugns the order dated 21.02.2014. The Income Tax Appellate Tribunal ('Tribunal' in short) has followed its own decision for the Assessment Year 2008-09, wherein, the following observations were made:

> *"8. We have heard the rival submissions and perused the material available on record. On a careful consideration of the peculiar facts and circumstances of*

the case and legal decision on the issue involved, we are of the view that there is no infirmity in the order of the CIT(A). A perusal of the assessment order shows that no basis for concluding that 25% of the expenditure on account of advertisement and marketing expenses should be disallowed has been set out which is a fact which prevailed with the CIT(A) to upset the finding in the assessment order as having based on no facts the admitted position is that this was the first year of operation of the assessee wherein w.*e.f 9.4.2009 the assessee substituted the word 'hot spot' for the word 'spice'. As such the assessee undertook schemes of sales promotion and advertisement in printing and electronic media the assessee was in the business of selling mobile hand sets and other electronic items and accessories admittedly operates in a highly competitive market wherein the specific brand was necessarily to be advertised and made known to the public at large the factum of incurring the expenditure of sales promotion schemes advertisement of its products in newspapers, electronic media, neon signs and banners etc. have not been dated. In these facts it is an admitted position that the expenses are incurred wholly and exclusively for the business of the assessee and is not a capital expenditure nor a personal expense. No reasoning or basis has been given by the A.D. to disallow 25% of the expenses claimed as if the expenditure is capital in nature then depreciation should have been allowed and if the expense is being treated as deferred revenue expenditure then it is contrary to the settled legal position. In the facts as they stand the expenses incurred for brand building exercise of Spice brand has rightly been allowed as revenue expenditure by the CIT(A) relying upon 'the order of the Tribunal in a group companies case namely ITO vs. Spice Communications Ltd. 210 ITR* 35, *SOT* 75, *we carefully in concurrence with the finding of the coordinate Bench as advertisement etc. cannot be said to be a capital asset. Similarly putting hoardings, neon signs etc. cannot be said to have led to the creation of any capital asset. We find support from the judgement of the Jurisdictional High Court in the case of CIT vs.*

Salora International Ltd. 308 ITR 199 *Delhi wherein considering the advertising expenditure of approximately Rs. 3.08 crores the conclusion of the Tribunal namely that there was direct nexus between advertisement expenditure and the business of the assessee and that the assessee had to incur such expenditure to meet the competition in the Indian market for selling its products in India was upheld. In the facts of the present case also it is imperative that unless the assessee made its products known to the market its business would suffer. The judgement of Apex Court in Empire Jute Mills* 124 *ITR 1* (8. C.) *which has considered that there could be cases where the expenditure even if it was incurred for obtaining a benefit of an enduring nature may nevertheless be on the revenue account in which case the test of enduring benefit would break down fully supports the view taken. Similarly the Jurisdictional High Court in CIT Vs. Casio India Ltd.* 335 *ITR* 196 *referred to a bunch of appeals with the lead case being ITA 1820/2010 entitled CIT vs. City Finance Consumers Finance Ltd. 335 ITR* 29 *Delhi had held that expenditure on advertising and sales promotion is to be treated as business expenditure u/s* 37 *of the Act. The Jurisdictional High Court therein considering the appeal of the Revenue in regard to the claim of the assessee before the A.* O. *pertaining to an expenditure of Rs.4.18 lakhs for advertising and sales promotion wherein the A.* O. *had relied upon the judgement of Apex Court in Madras industrial Investment Corporation Vs. CIT* 225 *ITR 802 (SC) upheld the order of the Tribunal which had confirmed the order of the CIT(A) who had held that there is no concept for deferred revenue expenditure in the Income Tax Act,* 1961. *Similar view was taken by the Jurisdictional High 'Court in Commissioner of Income Tax* vs *Pepsi Co India Cold drinks Ltd. In ITA 319/2010 rendered on 30.3.2011 a copy of which is placed at pages 155 to* 172. *Accordingly for the reasons given hereinabove being satisfied with the reasoning and finding arrived at in the impugned order the departmental ground is dismissed. In view of the fact that the finding in the impugned order is confirmed the* C.O. *filed by the assessee is infructuous and is dismissed as*

such. "

2. The learned senior standing counsel states that she does not have any instructions and cannot state whether the revenue has preferred an appeal against the findings recorded by the Tribunal in the respondent- assessee's own case for the Assessment Year 2008-09.

3. We have examined the aforesaid reasoning given by the Tribunal and find the same to be meritorious and deserves affirmation. The respondent-assessee was engaged in the service of trading of mobile handsets, its accessories and mobile repairing. For the purpose of business, it had incurred expenditure of Rs. 11,51,40,004/ on advertisement. The Assessing Officer treated the said expenditure as deferred revenue expenditure and 25% of the said amount i.e. Rs. 2,87,85,001/- was allowed in the year, observing that the balance amount would be allowed in next three years. He also directed initiation of penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 ('Act' in short) on account of the said addition.

4. The Tribunal has rightly noticed and referred to the decision of the Delhi High Court in ***Commissioner of Income Tax Vs. Pepsico India Cold Drink Ltd.*** **in ITA No. 319/2010, decided on 30.03.2011**

wherein, the judgment of the Supreme Court in ***Madras Industrial Investment Corporation Vs. Commissioner of Income Tax, 225 ITR 802 (SC)*** was examined and it was observed that the assessee is entitled to claim deferred revenue expenditure but the Assessing Officer cannot treat the revenue expenditure as deferred revenue expenditure. The reason is that the Act itself does not have any concept of deferred revenue expenditure. Even otherwise, there are a number of decisions that the advertisement expenditure normally is and should be treated as revenue in nature because advertisements do not have long lasting effect and once the advertisements stop, the effect thereof on the general public and customer diminishes and vanished soon thereafter. Advertisements do not leave a long lasting and permanent effect in the sense that the product or service has to be repeatedly advertised. Even otherwise advertisement expense is a day to day expense incurred for running the business and improving sales. It is noticeable that every year, the respondent-assessee has been incurring substantial expenditure on advertisements. The Assessing Officer, in the assessment order, had referred to the fact that similar additions were also made in the Assessment Year 2008-09. Keeping in view the nature and character of the respondent-assessee's business,

every year expenditure has to be incurred to make and keep public informed, aware and remain in limelight. This requires continuous and repeated publicity and advertisements to remain in public eye, to do business by attracting customers. It is an expenditure of trading nature. The aforesaid aspect has been highlighted by the Delhi High Court in ***Commissioner of Income Tax Vs. Salora International Ltd., [2009] 308 ITR 199 (Delhi)*** and ***Commissioner of Income Tax Vs. Casio India Ltd., [2011] 335 ITR 196.***

5. In view of the aforesaid, we do not think, the impugned order of the Tribunal calls for interference. The appeal is accordingly dismissed.

(SANJIV KHANNA)
JUDGE

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 19, 2014
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