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

\+ **INCOME TAX APPEAL NO. 594/2014**

Date of decision: 29th October, 2014

COMMISSIONER OF INCOME TAX ..... Appellant

Through Ms. Suruchi Aggarwal, Sr. Standing Counsel.

versus

M/S VODAFONE ESSAR SOUTH LTD. ..... Respondent

Through Mr. Sachit Jolly, Mr. Rahul Sateeja & Ms. Gargi Bhatt, Advocates.

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

SANJIV KHANNA, J. (ORAL):

This appeal by the Revenue pertaining to Assessment Year 2003-04, impugns the order dated 7th February, 2014 passed by the Income Tax Appellate Tribunal (Tribunal, for short) on the following issues:

> "i) Whether on the fact of the case ITAT could have deleted the disallowance of provisions for network repair and maintenance and credit verification cost, provision of consultancy charges and provision for car hiring charges amounting to Rs.28,62,275/- and Rs.29,90,064/-?
>
> ii) Whether payment towards brand launch expenses can be treated as revenue expenditure?"

2. The first issue relates to two additions made by the Assessing Officer on account of provisions for network repair and maintenance of

Rs.28,62,275/- and disallowance of Rs.29,90,064/- on account of cre verification cost, provision for consultancy charges and provision for car hiring charges.

3. The Tribunal in the impugned order on the first aspect has recorded as under:-

> "13. We have heard both the counsel and perused the records. We find that the authorities below have totally erred in treating the provision of expenses not allowable. It is only those provisions which are contingent liability which are not allowable. In this case, no case has been made out that the provision made by the assessee for network repair and maintenance expenses was only a contingent liability. The fact of the matter is that the provision was made for the repairs in this regard as the relevant bills were not received and payment thereof was not made upto the close of the assessment year. Hence, in accordance with accrual system of accounting, the provision in this regard was created. Hence, the provision for network repair and maintenance expenses cannot be said to be a provision made for contingent expenses. There is no contingency in the expenditure to be incurred in this regard. The expenditure has to be incurred though the exact amount was not ascertained. In such circumstances, in our considered opinion, the said disallowance has to be deleted. Accordingly, we set aside the orders of the authorities below and decide the issue in favor of the assessee."

4. A reading of the aforesaid paragraph would indicate that the services had actually been rendered and the assessee had accepted the claim which was due and payable but relevant bills had not been received till the end of the Assessment Year. The aforesaid position is the factual finding given by

the Tribunal.

5. On the question of disallowance on account of provision for credit verification cost of Rs.11,41,060/-, provision for consultancy charges of Rs.8,63,320/- and provision for car hire charges of Rs.9,85,684/-, i.e., total of Rs.29,90,064/-, the Tribunal has held as under:-

> "20. We have heard both the counsel and perused the records. We find that the issue involved is identical to be one dealt with regard to the ground no. 2 as above. Now following the same reasoning as in ground no. 2 above we hold that the provisions made by the assessee cannot be treated as contingent liability when nothing has been brought by the Revenue on record that expenditure in this regard was contingent in nature. The provision was made as the payment in this regard could not be made upto the close of the year as the bills in this regard were received late. Hence, there is no contingency in the expenditure to be incurred. Only the exact amount has not been ascertained. Hence, following the mercantile system of accounting such provision cannot be disallowed. Accordingly, we set aside the orders of the authorities below and decide the issue in favor of the assessee."

6. In other words, the Tribunal followed the reasoning for deleting disallowance of Rs.28,62,275/-, holding that the services had actually been rendered but only relevant bills had not been received. In view of the fact that the respondent-assessee was following mercantile system of accountancy, the amount due and payable had accrued and, therefore, allowable as an expenditure.

7. Learned counsel for the Revenue submitted that the findings recorded by the Tribunal are bereft of detailed reasoning why the said additions have been deleted. Facts in detail have not been elucidated. In order to examine the said contention, we have gone through the assessment order on the said two aspects and would like to reproduce the findings recorded by the Assessing Officer for the two additions:-

> "5. It was observed from the details filed that the assessee has provided of sum of Rs. 28,62,275/-under the head network repair and maintenance. Since, provision for expenses cannot be treated as revenue expenditure under the Income Tax Act, 1961 therefore the amount of Rs. 28,62,275/- is disallowed and added back to the income of the assessee.
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> XXXXXXXX
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> 8. The following amounts shown as provisions under the various expenses head cannot be treated as actual revenue expenditure therefore the same are being disallowed and added back to the declared income of the assessee.
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> a) Provision for credit verification cost Rs. 11,41,060/-
>
> b) Provision for consultancy charges Rs. 8,63,320/-
> c) Provision for car hire charges Rs. 9,85,684/-
> Rs. 29,90,064/-
> (Addition of Rs. 29,90,064/-)"

8. The Assessing Officer while making the additions of Rs 29,90,064, it is apparently clear, did not examine the matter meticulously and in depth. Facts and findings were virtually not elucidated. Perfunctory conclusion stands recorded. With regard to expenditure of Rs.28,62,278/-, the Assessing Officer simply observed that it was a provision and, therefore,

cannot be allowed and had to be added back. He did not go into t question whether or not the services were actually rendered as was claimed by the assessee and expenditure had been incurred. There is no discussion on the aspect of service rendered/performed, basis of computation, incurring of expenses etc. Similarly, with regard to the provision for credit verification cost, consultancy charges and car hire charges, there is hardly any reasoning given to add back and disallow the expenses.

9. The aforesaid additions were confirmed by the Commissioner of Income Tax (Appeals), who has recorded the following findings:-

> "3.1 The Ld AR stated as below:-
>
> The appellant follows mercantile system of accounting. The appellant has created provision for network and repair expenses for Rs. 28,62,275/-. The appellant has incurred expenses as per schedule 16 of the balance sheet (Anne. 3 of APB-I). There was no such provision in earlier years and this is the first year of commencement and hence provision was created was created and the same is allowable as per the provision of Section 37 of the Act.
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> 3.2 Examined the rival submissions. Here the appellant in fact had not incurred such expenditure it has just created a provision. A provision is an appropriation of money for non existing liability. In the instant case such liability is not quantified. Such provision is similar to liability only contingent in nature, not deductable and hence the action of the AO is sustained.
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> x x x x x
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> 6.1 The Ld. AR stated as below:-
> The appellant relied on Ground No. 2 as already been discussed above.

> 6.2 Examined the rival submissions. Following my own decision as given in para 3 against ground No. 2, such additions are hereby sustained."

10. The first appellate authority has observed that the expenditures should not be allowed as it had not been incurred but only a provision has been made. He further held that the provisions were for non-existing liabilities which had not been quantified. On the other hand, the finding of the Tribunal is to the contrary. Before us, the Revenue has not filed copy of the documents or papers, which were filed by the assessee in support of their contentions and to negate and challenge the findings of the Tribunal that the amounts claimed as expenses were not provisions in the sense that no services had been rendered and the expenditure had not been incurred. The finding of the Tribunal is clearly that relevant bills had not been received but the services had been rendered and tasks performed. The expenditure was incurred. In view of the aforesaid position, we are not inclined to interfere on the first aspect/question raised by the Revenue.

11. The undisputed position is that the assessee follows mercantile system of accountancy. The term "expenditure" donates idea of spending, paying out or away; it is something which is gone irretrievably. (See ***Indian Molasses Co. (P) Ltd. v. CIT,*** **(1959) 37 ITR 66).** In mercantile system the term expenditure is not necessarily confined to money actually paid towards a liability, but would cover a liability accrued or has been

incurred in praesenti, although the discharge could be at a future date. liability accrues or is incurred when it is an ascertained liability and not a contingent liability, i.e. liability which may or may not accrue and is uncertain. A liability, which actually exists and is also not disputed by assessee, but merely not paid, is not a contingent liability when the work or obligation has been actually performed by the third party to whom the payment is due. When the assessee accepts performance of the work or obligation and accepts liability to pay, it partake the character of actual liability in praesenti and is not dependent upon future happening of an event, which would result in creation of liability subsequently. In the former cases, the liability has incurred or accrued, but actual payment remains unpaid and would be made in the next year(s). Off course, the assessing officer can examine and go into valuation of the liability and decide whether it has been satisfactorily and fairly determined.

12. Assessing Officer and Appellate Authority in their orders had primarily relied upon the terminology or nomenclature of "provision" to disallow the claim of expenditure of Rs 29,90,064/- and Rs 28,62,275/- and opine that the provisions made should not be treated as expenditure incurred. This is not the correct and true test, which is to be applied. A "provision" can be made in respect of amounts which have become due and payable in the relevant previous year and therefore could be debited to the profit and loss account, once they represent ascertained liability. We do not

find any negative elucidation on the relevant aspects in the orders pass by Assessing Officer and the C.I.T (Appeals). Albeit, there is elucidation and finding recorded by tribunal that the services had actually been performed and liability was accepted by the respondent assessee. The amounts therefore represented ascertained liabilities. These were shown as "provisions" as the services were rendered close to the assessment years and relevant bills had not been received. This would not make the provisions a contingent liability.

13. Appropriate would be to refer to the decision of the Supreme Court in ***Calcutta Company Ltd. Vs. Commissioner of Income Tax, West Bengal, (1959) 37 ITR 1***, wherein it was held that if liability has been definitely incurred in form of unconditional contractual liability, it would not become contingent because payment has to be paid in future. However, liability should have been fairly and accurately estimated. The following passage from the said decision is relevant:-

> "Turning now to the facts of the present case, we find that the sum of Rs. 24,809 represented the estimated expenditure which had to be incurred by the appellant in discharging a liability which it had already undertaken under the terms of the deeds of sale of the lands in question and was an accrued liability which according to the mercantile system of accounting the appellant was entitled to debit in its books of account for the accounting year as against the receipts of Rs. 43,692-11-9 which represented the sale proceeds of the said lands. Even under s. 10(2) of the Income-tax Act, it might possibly be urged that the word "expended" was capable of being interpreted as "expendable" or "to be expended" at least in a case where a

liability to incur the said expenses had been actually incurred by t assessee who adopted the mercantile system of accounting and the debit of Rs. 24,809 was thus a proper debit in the present case. We need not however base our decision on any such consideration. We are definitely of opinion that the sum of Rs. 24,809 represented the estimated amount which would have to be expended by the appellant in the course of carrying on its business and was incidental to the same and having regard to the accepted commercial practice and trading principles was a deduction which, if there was no specific provision for it under section 10(2) of the Act was certainly allowable deduction, in arriving at the profits and gains of the business of the appellant under section 10(1) of the Act, there being no prohibition against it, express or implied in the Act.

It is to be noted that the appellant had led evidence before the Income-tax authorities in regard to this estimated expenditure of Rs. 24,809 and no exception was taken to the same in regard to the quantum, though the permissibility of such a deduction was questioned by them relying upon the provisions of s. 10(2) of the Act.

It therefore follows that the conclusion reached by the High Court in regard to the disallowance of Rs. 24,809 was wrong and it should have answered the referred question in the affirmative."

14. The aforesaid principles were applied to allow deduction of "provision" for gratuity, in case of serving employees and to whom the gratuity was payable only on retirement/termination, subject to condition that the amount so estimated was sufficiently certain to be capable of being valued. Gratuity payable in future, it has been held, was an obligation arising out of the present engagement and the estimated liability was ascertainable. As a present obligation, it could be allowed as a deduction in

the profit and loss account. Subsequently, Section 40A(7) of the Act w enacted to specify and stipulate that provision for gratuity would be allowed in the profit and loss account when additional conditions stated therein were also satisfied. [See decision of the Supreme Court in ***Shree Sajjan Mills Ltd. v. CIT*, (1985) 156 ITR 585 (SC)]**

15. Again in ***Bharat Earth Movers v. CIT (2000) 245 ITR 428 (SC),*** it has been observed:-

> "The law is settled: If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in present though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain. … A few principles were laid down by this court, the relevant of which for our purpose are extracted and reproduced as under:
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> > (i) For an assessee maintaining his accounts on the mercantile system, liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in the case of amounts actually expended or paid ;
> > (ii) Just as receipts, though not actual receipts but accrued due are brought in for income-tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business;
> > (iii) A condition subsequent, the fulfilment of which may

result in the reduction or even extinction of the liability, wou not have the effect of converting that liability into a contingent liability ;

(iv) A trader computing his taxable profits for a particular year may properly deduct not only the payments actually made to his employees but also the present value of any payments in respect of their services in that year to be made in a subsequent year if it can be satisfactorily estimated."

16. The second issue raised by the Revenue relates to "brand launch expenses". The finding of the Assessing Officer to disallow the said expenses of Rs.8,45,45,104/- is to be found in one paragraph only, i.e., paragraph 10, which reads:-

> "10. It is further observed from the perusal of computation of income that assessee has claimed an amount of Rs. 10,56,81,379/- as brand launch expenses as revenue expenditure. Keeping in view the nature of expenses the same are treated as deferred revenue expenditure and t s" of the same amounting to Rs. 2,11,36,275/- is allowed in the current year and the balance of Rs. 8,45,45,104/- can be amortised in the next four years.
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> (Addition of Rs. 8,45,45,104/-)"

17. There is no other discussion or elucidation in the assessment order passed by the for making the said substantial addition. It is noticeable that the Assessing Officer himself had held that the expenses were of revenue nature but he had treated them as deferred revenue expenditure by allowing $1/5^{th}$ i.e. Rs.2,11,36,275/- in the current year and the balance amount of Rs.8,45,45,104/- was directed to be amortised in the next four years.

18. The Commissioner of Income Tax (Appeals) has held as under:-

"8.2 Examined the rival submissions. The accounting approach in this regard made by the appellant is a colourable mode to circumvent the provisions of the law. The doctrine of colourable legislation is based on the maxim that what cannot be done directly, cannot also be done indirectly. The short question whether such accounting treatment to circumvent the provision of the law can be treated as permissible accounting approach from IT point of view. The underline idea is that, although apparently the present accounting practice has been made which purports to Act within the limits of accounting principle in substance, in reality on the other hand it has transgressed the limits on its power as conferred by IT law by taking resort to such a pretence or disguise. The decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd.:-

> "It is true that this Court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question IS whether a receipt of money is taxable or not or whether certain deductions from the receipt are permissible in law or not, the question is to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override Sec.56 or any other provision of the Act. As pointed out by Lord Russel in the case of B.S.C. Footwear Ltd (1970) 77 ITR 857, the Income tax Law does not march step by step in the footprints of accountancy profession".

8.3 The appellant is not entitled for the provision and that is why it has resorted to colourable device to represent the same so that it can circumvent the provisions of the Act as invoked by the Ld AG. The essence of the matter is that the appellant has tried to do something which it cannot accomplish directly within the scope of the IT law. Regarding the question of taxability as per the principle of law vis-a-vis accountancy practice

has been already discussed in earlier paragraphs Tuticorin Alkali Chemicals (Supra). There is no dispute about the aforesaid principle of law laid down by the Hon'ble Supreme Court accounting practice for ascertainment of profits adopted by a company cannot override the specific provisions contained in the IT Act relating to taxability of any income. The appellant has claimed the entire brand registration expenses as revenue expenditure and debited the same in the accounts for the relevant period.

8.4 In the instant case the appellant has spent Rs. 10,56,81,379/as brand launch expenses and claimed the same as revenue expenditure. The essential question of law in the present case is whether payment towards brand launch expenses can be treated as revenue expenditure. A four judge bench of the Supreme Court in Assam Bengal Cement Company Ltd V CIT AIR 1955 Supreme Court 89 indicated that the line of demarcation between capital expenditure and revenue expenditure is very thin. Several English decisions were referred to and the Court approved the opinion of the Full Bench of Lahore High Court in Benarsidas Jaggannath, In re (15 ITR 185). The Court clearly observed in that case :-

> "Such expenditure can be looked at either from the point of view of what is acquired or from the point of view of what is the source from which the expenditure is incurred. If the expenditure is made for acquiring or bringing into existence an asset or advantage for enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. If on the other hand it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits, it is a revenue expenditure. If any such asset or advantage for the enduring nature of the business is thus acquired or brought into existence it would be immaterial whether the source of the payment was the capital or the income of the concern

> or whether the payment was made once and for all or was made periodically. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source or the manner of payment would then be of no consequence."

8.5 The Ld. AO has discussed at length and established that this is such expenditure which has got an enduring benefit. Irrespective of the fact the frequency of payment of the said amount, the appellant would derive a benefit which would spread over not only for the period of expenditure but on subsequent years to come. The facts and circumstances of the present case justifies that the appellant although incurred the expenditure in a particular year but the fruits of such benefit would continue to be received over a period of ensuing years. In fact allowing the entire expenditure in one year would give a much distorted picture of profit of a particular year. Reliance is placed on Madras Industrial Investment Corporation Ltd v CIT (Supreme Court), Hindustan Aluminum Corporation Ltd v CIT (1983) 144 ITR 474 (Cal). The facts and circumstances of the case justifies that the appellant should have debited only 1/5th of the amount of expenditure in the P&L alc for the year under consideration and the balance should have been spread over for the four succeeding years with a view to avoid presentation of distorted picture of the profit. Such spreading over of the said expenditure over a period of 5 years would have been in accordance with the expected accounting practice which is in no way contrary to any specific provisions contained in the IT Act. At the same time such spreading over of expenditure resulting in enduring benefit is in conformity with the aforesaid principle as laid down by the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation (Supra).

8.6 On a similar issue Ld ITAT, Ahmedabad in case of ACIT v Amtrex Appliance Ltd 9 TTJ 339 has held such expenses should be spread over a period 5 years. That such expenditure should be spread over 5 years has

> already been discussed in my earlier paragraphs and the argument that it is desirable for spreading over for successive years need not be rehearsed once again. In view of the aforesaid facts and discussion and also in view of the judgement of various Courts including the Apex Court. I am of the opinion that 1/5th of the expenditure i.e. Rs. 2,11,36,275/- should be allowed for the period under consideration and the balance of Rs. 8,45,45,104/- should be disallowed and appellant could spread the same for the four successive years subject to other provisions of the Act. Hence addition to the extent of Rs. 8,45,45,104/- is sustained."

19. The first appellate authority has referred to the distinction between capital and revenue expenditure but did not disturb the final finding of the Assessing Officer that the expense was revenue in nature. Therefore, the discussion distinguishing capital and revenue expenditure was superfluous and inconsequential. When an expenditure is revenue in nature and not capital, then provisions of Section 37(1) of the Income Tax Act, 1961 (Act, for short) would come into play and the expenditure which qualifies and meets the requirements of the said Section has to be allowed as a deduction. It is in these circumstances that the Tribunal has allowed the appeal of the assessee, observing as under:-

> "24. We have heard both the counsel and perused the records. Ld. Counsel of the assessee submitted that the AO has himself treated the same expenditure as deferred revenue expenditure. AO had allowed 20% during the year and rest is to be spread over in the succeeding 4 years. Ld. Counsel of the assessee in this regard submitted that there is

no concept of deferred revenue expenditure in taxation laws and expenditure has either to be capitalised or revenue. He has submitted that in this case the AO has not made out the case that the expenditure involved is capital in nature. Ld. Counsel of the assessee submitted that brand launch expenses incurred in the pre-operative period has been added to the pre-operative expenses. He further submitted that the Hon'ble Apex Court decision in the case of Madras Industrial Investment Corporation vs. CIT. (Supra) is not applicable on the facts of the case. In this regard, Ld. Counsel of the assessee referred to decision of this tribunal in ACIT vs. Global Healthline P Ltd. passed in ITA NO. 3319/Del/2012 vide order dated 7.9.2012. In this case, the tribunal has held as under:-

"6.We have heard the rival contentions and perused the records. We find that the case law relied_upon by the Assessing Officer in the case of Madras Industrial Corporation Ltd, vs.CIT,225 ITR 802 is not applicableon the facts of the present case. In the aforesaid case the said Corporation issued debentures in December, 1966 at a discount. The total discount on the issue of 1.5 crores amounted to 3,00,000/- for the assessment year 1968-69. The company wrote off 12,500/- out of the total discount of 3,00,000/-being the proportionate amount of discount for the period of six months ending 30.6.1967 taking into account the period of 12 years which was a period of redemption and discount for 3,00,000/- over the period of 12 years. In these circumstances,the expenditure was held to be deferred revenue expenditure. Hence, we agree with the Ld. Commissioner of Income Tax (A) that the Hon'ble Apex Court's decision in the case of Madras Industrial Corporation Ltd. vs. CIT. (Supra) does not help the case of the Revenue. In our considered opinion, there is no concept of 'deferred revenue

expenditure' in the Income Tax Act. The expenditure is either 'revenue' in nature or 'capital'. If the expenditure is of revenue nature and is incurred wholly or exclusively for the purpose of business and has been incurred during the year, the same is allowable expenses subject to condition laid down in Section 30 to Section 37 of the Act. Accordingly, we hold that the impugned expenditure was allowable as Revenue expenditure and hence, we do not find illegality in the order of the Ld. Commissioner of Income Tax (A). Accordingly, we uphold the same."

25. We have carefully considered the submissions. We find that the assessee in this regard has incurred expenditure which are in the nature of brand launch expenses. We note that the said expenditure incurred upto the pre operative period has been capitalised and expenditure incurred after the operation has started have been debited to revenue. AO in this regard, has allowed 20% thereof by treating the same as deferred revenue expenditure. We agree with the contention of the assessee's counsel that there is no concept of deferred revenue expenditure in taxation laws. In the matter of taxation, expenditure is either to be capitalized or is revenue in nature. In this case the expenditure involved is revenue in nature and has been incurred wholly and exclusively for the purpose of business. The amount has actually been incurred by the assessee as such the same is allowable in the entirely. The case law of the Hon'ble Apex Court by the Ld. CIT(A) was in a different context and hence is not applicable, as has been brought out in the tribunal order as above. In the background of the aforesaid discussion and precedent, we set aside the orders of the authorities below and decide the issue in favor of the assessee."

20. The aforesaid reasoning of the Tribunal is in consonance and as per

the ratio in ***Commissioner of Income Tax, Delhi-IV versus Industr Finance Corporation of India Limited***, (2009) 185 Taxman 296 (Delhi) wherein it has been held:-

> "22. The judgments on which reliance is placed by the learned Counsel for the Revenue would be of no avail in the instant case. The learned Counsel for the Revenue had strongly argued that matching concept is to be applied, as per which part of the expenditure had to be deferred and claimed in the subsequent years and, therefore, approach of the AO was correct. However, this argument overlooks that even in Madras Industrial Investment Corporation (supra), on which the reliance was placed by Ms. Bansal, the general principle stated was that ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business can be allowed in the year in which it is incurred. Some exceptional cases can justify spreading the expenditure and claiming it over a period of ensuing years. It is important to note that in that judgment, it was the assessee who wanted spreading the expenditure over a period of time as was justifying such spread. It was a case of issuing debentures at discount; whereas the assessee had actually incurred the liability to pay the discount in the year of issue of debentures itself. The Court found that the assessee could still be allowed to spread the said expenditure over the entire period of five years, at the end of which the debentures were to be redeemed. By raising the money collected under the said debentures, the assessee could utilize the said amount and secure the benefit over number of years. This is discernible from the following passage in that judgment on which reliance was placed by the learned Counsel for the Revenue herself:
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> > "The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire

amount of Rs. 3,00,000 in that accounting year. This conclusion does not appear to be justified looking to the nature of the liability. It is true that the liability has been incurred in the accounting year. But the liability is a continuing liability which stretches over a period of 12 years. It is, therefore, a liability spread over a period of 12 years. Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirely in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. Thus in the case of Hindustan Aluminium Corporation Ltd. v. Commissioner of Income Tax, Calcutta-I : (1983) 144 ITR 474, the Calcutta High Court upheld the claim of the assessee to spread out a lump sum payment to secure technical assistance and training over a number of years and allowed a proportionate deduction in the accounting year in question.

Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures."

23. XXXXX

> 24. What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the Income Tax department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of matching concept is satisfied, which upto now has been restricted to the cases of debentures."

21. Similarly, this Court in ITA No. 597/2014, ***Commissioner of Income Tax-III versus M/s Spice Distribution Limited*** has held as under:-

> "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 vanishes 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, very 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."

22. Referring to the said legal position, this Court recently, in ***CIT Vs. SBI Cards & Payment Services Private Limited, ITA No. 603/2014*** decided on 29.09.2014, observed :-

> "16. … Section 145 postulates that accounts should give true and fair picture of the financial position or the income of the assessee. It is further noticeable that the Act i.e. the Income Tax Act, 1961 only refers to capital or revenue expenditure. There is no provision in the Act which postulates or refers to deferred revenue expenditure. Deferred revenue expenditure is, therefore, not as such recognised in the Act. The Act to this extent is at variance and does not accept deferred revenue expenditure as a plausible and acceptable method. Accounting principles or standards have to be applied and adopted and they must disclose fair and true financial position and the income, but they cannot be contrary to the provisions or the mandate of the Act. The Act would then override the accountancy principles. There are several provisions in the Act like Section 43B which provide for different treatment than required under the provisions of the Companies Act or the accounting principles or standards. Reference can be made to Kedarnath Jute Mfg. Co. Ltd. Versus CIT, (1971) 82 ITR 363 where it was held,
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> > "… We are wholly unable to appreciate the suggestion that if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although under the law, a

> deduction must be allowed by the Income Tax Officer, assessee will lose the right of claiming or will be debarred from being allowed that deduction. Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. …"

In Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT, (1997) 227 ITR 172 at page 184, it was observed,

> "It is true that this Court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override Section 56 or any other provision of the Act. As was pointed out by Lord Russell in the case of B.S.C. Footwear Ltd. [(1970) 77 ITR 857, 860], the Income Tax law does not march step by step in the footprints of the accountancy profession."

It was held by the Bombay High Court in Commissioner of Income-Tax versus Bhor Industries Limited (2003) 264 ITR 180,

> "… If (sic, It) is well settled that, ordinarily, revenue expenditure, which is incurred wholly and exclusively for the purposes of business, must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years even though the assessee has written it off in its books over a period of years. It is only in cases of special type of assets that the spread over is warranted. …"

Judgment of the Supreme Court in Madras Industrial Investment Corp. (supra) was considered and distinguished in CIT vs. Panacea Biotech Ltd., ITA No. 22 & 24/2012 and CIT vs. Citi Financial Consumer Fin Ltd. (2011) 335 ITR 29 (Del.), holding that the assessee"s claim to spread over the expenditure over a period of time is tenable provided it is justified as in the case of issue of bonds at a discount. However, the same principle would not apply if the assessee treats the same as revenue expenditure and in fact

per Section 37(1) of the Act, the expenditure is revenue in natu and has been incurred or has accrued. This right to claim deferred revenue expenditure is given to the assessee and not to the revenue. In the facts of the present case, as already noticed, the expenditure as per the Commissioner of Income Tax (Appeals) should be partly spread over two years, instead of the year in which it was incurred. But it is accepted and admitted that the expenditure in question was revenue in nature. It had accrued and was paid. Nothing and no acts had to be performed and undertaken in future. It is not shown how and why, if the said expenditure was allowed in the current year, it would not reflect true and correct financial position or income of the assessee in the current assessment year."

23. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

OCTOBER 29, 2014
VKR/NA