

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 5379/Mum/2019 (Assessment Year 2013-14)

DCIT-6(1)(2) Room No.506, 5 th Floor Aaykar Bhawan M.K.Road, Mumbai-400 020	Vs.	Axis Asset Management Co.Ltd. Axis House, 1 st Floor C-2, Wadala International Center, Panduranga Budhkar Marg Worli, Mumbai-400 025 PAN : AAHCA5892J
(Appellant)		(Respondent)

Assessee by	Shri Percy Pardiwala
Department by	Shri Anoop
Date of Hearing	19.05.2021
Date of Pronouncement	13.07.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A)-12 dated 23.04.2019 and pertains to Assessment Year 2013-14.

2. The grounds of appeal read as under :

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the Assessing Officer to delete addition of Rs. 11,26,94,520/- made on account of deferred brokerage expenditure without appreciating the fact that even the assessee has not debited such expenditure in its *P&L A/c*,
2. Whether on the facts and in the circumstances of the case and in law, the Ld, CIT (A) has erred in deleting the addition of Rs 11,26,94,520/- made on account of deferred brokerage expenditure without appreciating the fact that the corresponding income also has not been recognized as Income. Thus, the claim of assessee is against the basic principal of matching of revenue with expenditure.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.1 1,26,94,520/- made on account of deferred brokerage expenditure relying on Hon'ble Apex Court decision in Taparia Tools Ltd vs. JCIT reported in 372 ITR 605 (SC) without appreciating the fact that In the instant case, income is offered by the assessee for more than one year and hence, as per revenue matching principle, expenditure has to be claimed for more than one year and not in the first year itself; and hence, the facts are distinguishable..
4. The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored

3. Brief facts of the case are that the assessee company engaged in the business of investment management services & Portfolio management services. The assessee claimed deduction towards brokerage expenses of Rs.11,26,94,520 in the statement of computation on the plea that it was not debited to the profit and loss account. It was explained to the AO that though the assessee incurred an expenditure of Rs.14,82,88,820 during the a year, a sum of Rs.3,55,94,300/- is debited to profit & loss account and a sum of Rs.11,26,94,520 is shown as deferred revenue expenditure in books of account and the same appears in the balance sheet under the head Other assets. Assessee further submitted that the same is the cost that has already incurred in the current year although as per the accounting treatment in books the same is transferred to prepaid expenses and such cost is recorded as deferred revenue expenditure and claimed over the period of maturity of underlying schemes. The brokerage becomes due and the liability to pay arises the moment investor invests in mutual fund schemed. Assessee also relied upon the Hon'ble Supreme Court's decision in the case of Kedarnath Jute Mfg.Co Vs. CIT 82 ITR 36 and the decision of Hon'ble Gujarath High Court's decision in the case of General Co-operative Bank v. ACIT in civil application No.16483 of 2010. Assessee further submitted that the same practice has been consistently being followed for treatment of brokerage expenses I its books as well as income tax return.

The Assessing Officer was not convinced. He observed that In this cse, the assessee itself claims that the expenditure on brokerage relates to the investments which will yield income over a period of more than one year and hence, debited only a portion of such expenditure relating to the year under consideration. That here, the prime question is whether the entire expenditure can be treated as the expenditure is relating to the year under consideration, while a contrary view is taken by the assessee itself. That further, in the Income tax Act, the income of a particular year is determined, which means that the expenditure also should be allowed on the same lines. That with due respect to the rationale determined in the case laws cited by the assessee, it is stated that the assessee's case is quite distinguishable, in that the expenditure claimed by the assessee is not governed by a particular provisions of the Income tax Act. That in view of the above discussion and also in view of the stand taken in assessee's own case for AY 2012-13, claim made by the assessee in the computation of income on account of Deferred Brokerage expenses of Rs.11,26,94,520/- is not allowed.

4. Upon assessee's appeal Ld.CIT(A) noted the that the appellant has stated that following the accepted accounting principle, it has amortized the upfront brokerage expenses paid in its books of account over the life of the Mutual Fund Schemes. That it is so because the entire brokerage becomes due and the liability to pay arises at the moment investor invests in Mutual Fund schemes. That if the appellant does not pay the brokerage expenses to the broker then, the broker can sue the appellant to recover the amount due. That therefore, for the purpose of accounting treatments, out of the total brokerage expenses incurred during the year, it has debited Rs.3,55,94,300 to the P&L Account and balance amounting to Rs.11,26,94,520 is deferred in its books of account over the life of the schemes. That the appellant, however, in the return of income, has claimed deduction of the entire brokerage expenses of Rs.14,82,88,820. That the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of Tapania Tools Ltd. vs. JCIT 372 ITR 605 in support of its contention.

5. Considering the above, Ld.CIT(A) decided the issue in favour of the assessee by relying upon the decision of Hon'ble Supreme Court in Taparia Tools Ltd. by holding as under:-

3.4 In the case of Taparia Tools Ltd. vs JCIT (supra), the Hon'ble Supreme Court held that there is no concept of deferred revenue expenditure in the I.T. Act, except under specified sections where amortization is specifically provided such as in section 35D. The Hon'ble Apex Court held that; if a business liability has arisen in the Accounting Year, the deduction should be allowed even if such a liability may have to be quantified and discharged at a future date. The Hon'ble Court held that in the said case, the liability had arisen in the assessment year in question, it was even quantified and discharged as well in the very accounting year and hence the deduction should be allowed.

3.5 The assessee has relied on the above mentioned decision of the Hon'ble Supreme Court in support of its contention that the entire amount of brokerage and stamp duty expenses incurred during the year with regard to the Mutual Fund Schemes represents an allowable expenditure. On careful examination of the facts of the case and the decision of the Hon'ble Supreme Court relied on by assessee, it is seen that the said decision is squarely applicable to the facts of the assessee's case. As already mentioned, the brokerage in the case of the assessee represented revenue expenses and the liability for the same had arisen during the previous year itself. Hence, the ratio of the decision of the Hon'ble Supreme Court needs to be applied to the assessee's case and it has to be held that the said expenditure is required to be treated; as an allowable expenditure for the present assessment year itself. If the assessee claims the expenditure incurred, the Department cannot deny the same and the fact that assessee has deferred the expenditure in the books of account is irrelevant. In view of the above discussion, the disallowance of Rs.11,26,94,520 made by the A.O. is directed to be deleted.

6. Against the above order revenue is in appeal before us. We have heard both the parties and perused the records.

7. Ld. DR relied upon the order of AO and also on ITAT Delhi decision of Citi Financial Consumer Finance vs ACIT in ITA No.4305/Del/2005, dated 18/12/2009.

8. Per contra Ld. Senior Counsel of assessee Shri Percy Pardiwala relied upon order of Ld.CIT(A). He relied upon Hon'ble Supreme Court decision of Taparia Tools

Ltd.(supra). He further submitted that the said decision of ITAT Delhi was considered and explained by ITAT in ITA No.4305/Del/2005 & others vide order dated 18.12.2009 in the same assessee's case of subsequent period also and the issue was decided in favour of assessee. In this ITAT order one of us in the present Bench was the author sitting along with then President of ITAT Shri Vimal Gandhi. Ld. Senior Counsel Shri Percy Pardiwala pointed out that this order of ITAT was upheld by Hon'ble Delhi High Court in CIT vs City Financial Consumer Fin. Ltd. 20 taxmann.com 452. Shri Pardiwala submitted that this decision also duly supports the allowance of expenditure entirely as revenue expenditure for the year.

9. Upon careful consideration, we note that issue in present case is the treatment of brokerage expenditure, which though already incurred in current period has been treated as deferred revenue expenditure in account of the assessee. In the computation of income the assessee has claimed said expenditure as adjustment from income for the current year. Hence, the question before us, whether the said claim can be allowed u/s 37 of the Act.

10. We note that there is no dispute that the expenditure has been incurred in the relevant assessment year, in which the assessee is claiming this deduction u/s. 37 of the Act. Thus, there is no dispute that the expenditure is in fact incurred. It is also not dispute that the expenditure in question is business expenditure incurred wholly for the purpose of the business of the assessee. It is also undisputed that the expenditure is incurred in the nature of brokerage expenditure incurred for obtaining the investments in mutual funds and in no manner, any portion of the expenditure will revert back to the assessee. In these facts, the AO's case is that the said expenditure has been incurred in connection with the investment, in mutual fund which yield income over a period of time. So, when the income arising from expenditure is spread over a period of time, the said expenditure should also be allowed over a

period of time to match the income. Although, not specifically mentioned this argument has its origin in the judgment of the Hon'ble Supreme court in Madras Industrial Investment Corporation 225 ITR 802. In that case, the Supreme Court had referred to this 'matching concept'. It was held that ordinarily revenue expenditure incurred wholly or exclusively for the purpose of business, can be applied in the year in which it is incurred. However, the facts may justify spreading the expenditure and claiming it over a period of ensuing years, where allowing the entire expenditure in one year could give a very distorted picture of the profits of a particular year. One such instance was issuing debentures at discount. The Supreme Court was of the opinion that though in such cases the assessee had incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure the benefit over a number of years. There was a continuing benefit to the assessee of the company over the entire period and, therefore, the liability was to be spread over the period of debentures.

11. We note that the aforesaid decision had a distinguishing feature that it was the assessee who sought to spread the expenditure. Thus, What follows from the decision 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 up to now has been restricted to the cases of debentures.

12. Hence, we are of the opinion that AO cannot force the assessee to spread the expenditure over a number of year on the plea of matching principal, when the expenditure has already been duly incurred. In this regard, it is also noted that the implied view of the AO that the expenditure results in a benefits of enduring nature is

also not sustainable. It will also be apt to refer to the decision of the Hon'ble Apex Court in the case of the Empire Jute Co. Ltd. Vs. CIT 124 ITR 1 wherein it was observed that "there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principles laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more effectively or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.

13. Furthermore, in the case of Taparia Tools(supra) Hon'ble Supreme Court held that there is no concept of deferred revenue expenditure in the I.T. Act, except under specified sections where amortization is specifically provided such as in section 35D. As regards the ground of the revenue that assessee has claimed the expenditure in profit and loss account, we find that entries in books of account are not determinative of the true nature and substance of the transaction. For this proposition, we draw support from Hon'ble Supreme Court decision in the case of Tuticorin Alkali Chemicals 141 CTR SC 387 Furthermore, as noted above Hon'ble Delhi High Court in the case of City Financial Consumer Fin. Ltd.(supra) has dealt with an analogical issue and the exposition is as under:-

I. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of -Assessment years 2001-02 and 2002-03 - Expenditure on publicity and advertisement is to be treated as revenue in nature allowable fully in year in which it is incurred [In favour of assessee]

The expenditure on publicity and advertisement is to be treated as revenue in nature allowable fully in year in which it is incurred. In the income-tax law, there is no

concept of deferred revenue expenditure. Once the assessee claims the deduction for the whole amount of such an expenditure, even in the year in which it is incurred, and the expenditure fulfils the test laid down under section 37, it has to be allowed.

In the assessment year 2001-02, the assessee-company claimed an expenditure of Rs. 3.93 crores on account of advertisement and publicity expenditure as revenue expenditure and the same had been debited to the profit and loss account. The Assessing Officer was of the view that this expenditure could not be termed as an expenditure relevant exclusively for the period of 12 months under consideration during the said assessment year; such advertisement and publicity expenses had a bearing on the period which spread over a period of five years and, therefore, the assessee could not claim the benefit in the year in which the expenditure was incurred. Thus, opining that the benefit was of an enduring nature, he was of the view that it was to be spread over a period of five years and, thus, allowed 1/5th of the aforesaid amount in the year in question. The Tribunal, however, allowed the assessee's claim.

Held that the expenditure in question was incurred by the assessee in the relevant assessment years in which the assessee was claiming deduction thereof under section 37. Thus, there was no dispute that the expenditure was, in fact, incurred, it was also not in dispute that the expenditure in question was business expenditure incurred wholly for the purpose of the business of the assessee. The expenditure incurred in the nature of advertisement and publicity was incurred forever and in no manner any portion thereof reverted back to the assessee. There was no advantage which had accrued to the assessee in the capital field. The expenditure was incurred to facilitate the assessee's trading operations. No fixed capital was created by this expenditure.

Only in exceptional cases, of the nature mentioned in *Madras Industrial Investment Corporation .d. v. C/T [1997] 225 ITR 802 (SC)*, the expenditure can be allowed to be spread over, that too ,when the assessee chooses to do so. Hence, the assessee's claim was to be allowed in full in the year in question.

II. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of -Assessment years 2001-02 and 2002-03 - Where assessee had been financing hire-purchase of vehicles and homes, etc., and period of such financing ranged from less than one year to 5 years, on such transactions Direct selling expenses, stamping fee and commission paid to selling agents were to be allowed in year in which transactions took place [In favour of assessee]

The assessee had been financing hire-purchase of vehicles and homes, etc., and the period of such financing ranged from less than one year to 5 years. Holding that on such transactions, direct selling expenses, stamping fee and commission paid to selling agents could not be treated as expenses relating to the year in which the transaction took place as the period of financing was normally more than one year, the Assessing Officer took the view that these expenses could not be termed as having the chargeability in the year which they were incurred. He took the average of three years for such agreements and spread the expenses over a period of three years,

thereby allowing 1/3rd expenditure incurred in that particular year. The Tribunal held that as the expenditure incurred had nothing to do with the period or length of time and had no linkage, whatsoever, to any period, the entire expenditure was allowable in the year in which it was incurred. It further held that the expenditure was incurred once and for all in the form of stamping duty as well as commission paid to the direct selling agents for procuring the loan assignments and it was not dependent upon the working out of the agreements ultimately entered into between the assessee and the customers. It held that since the commission was paid to the direct selling agents, for their services in sourcing hires in the year in which the loan was disbursed, it was to be allowed as business expenditure.

Held that the Tribunal was right in holding that the expenditure was incurred once and for all in the form of stamping duty as well as commission paid to the direct selling agents for procuring the loan assignments and it was not dependent upon the working out of the agreements ultimately entered into between the assessee and the customers. Since the commission was paid to the direct selling agents, for their services in sourcing hires in the year in which the loan was disbursed, it was to be allowed as business expenditure. Thus, the expenditure was required to be allowed as revenue/business expenditure incurred in the year in which the transactions were entered into.

14. Thus to recapitulate in the instant case before us, we find that assessee has incurred expenditure on brokerage expenditure paid for obtaining investments in mutual funds. The investment made in the funds yields income over a period of years, however the said amount of brokerage expenditure incurred is not refundable to the assessee in any circumstances. Undisputedly, the expenditure is wholly and exclusively for the purpose of business. The concept of deferred revenue expenditure is not there in I.T.Act, which is duly supported by the decision of Hon'ble Supreme Court in Taporita Tools (supra). The expenditure cannot also not be categorized in the capital filed on the plea of enduring benefit, as per the ratio of Hon'ble Supreme Court in Empire Jute Mills (supra) Hence, we have no hesitation to hold that in these circumstances and examining the present issue on the anvil of Hon'ble Supreme Court decisions as above, the expenditure incurred on brokerage is to be allowed in full in the impugned assessment year, as deferral of the same over a number of years for income tax purposes is not sustainable. Accordingly, we uphold the Ld.CIT(A)'s order.

15. In the result, revenue's appeal is dismissed.

Pronounced in the open court on 13 .07.2021

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 13 /07/2021

Sr.PS. Thirumalesh

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai