

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,  
JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA Nos. 519, 520 & 521/JP/2012  
निर्धारण वर्ष / Assessment Year : 2005-06, 2006-07 & 2008-09

M/s. Rajasthan Patrika (P) Ltd. , JLN Marg, Jaipur	बनाम Vs.	The Addl. CIT Range-5 & ACIT, Circle- 5 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 7856 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 573 & 574/JP/2012  
निर्धारण वर्ष / Assessment Year : 2006-07 & 2008-09

The ACIT Circle- 5 Jaipur	बनाम Vs.	M/s. Rajasthan Patrika (P) Ltd. , JLN Marg, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 7856 G		
प्रत्यर्थी / Respondent		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Agarwal ,CA  
Shri Manish Agarwal, CA &  
Shri Javed Iqbal, Advocate

राजस्व की ओर से / Revenue by : Smt. Neena Jeph, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16/04/2015

घोषणा की तारीख / Date of Pronouncement : 15/06/2015

आदेश / ORDER

PER R.P. TOLANI, JM:-

This is a set of 3 appeals by the assessee for AYs 2005-06, 2006-07 & 2008-09 and 2 appeals by the revenue for AYs 2006-07 & 2008-09 against the respective

orders of the Id. CIT(A). Grounds raised in respective appeals are summed up as under:-

ASSESSEE'S APPEALS: AY 2005-06

1. *On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming the disallowances made out of following expenses arbitrarily without appreciating the nature of expenses incurred vis-à-vis expediency, thus the disallowances so confirmed deserves to be deleted.*

<b>S.No.</b>	<b>Nature of Expenses</b>	<b>Amount claimed</b>	<b>Amount disallowed</b>
i)	Sales Promotion Exp.	7,67,50,154	13,90,047
ii)	Telephone Exp.	1,27,11,214	5,00,000
iii)	Deepawali Exp.	20,65,215	4,13,043
iv)	Travelling Exp.	96,58,750	9,65,875
v)	Business Exp.	11,23,657	2,24,731
vi)	Other Expenses	2,49,05,438	5,00,000
vii)	Vehicle Running Exp.	21,15,770	2,11,577
viii)	Event Management Exp.	1,09,41,330	5,00,000
ix)	Management / Staff Training Exp.	7,03,176	3,51,588
x)	Foundation Day Expenses	40,54,240	2,02,712

2. *On the facts and circumstances of the case the Ld. CIT(A) has grossly erred in partly confirming the disallowance of Marketing and Survey Expenses uphold the disallowance @ 20% as against 5% by Ld. AO) on the remaining expenses of Rs. 69,50,238/- resulting into confirm action of disallowance of Rs. 13,90,047/-.*
3. *On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming the disallowance of Marketing and Survey Expenses legitimately claimed at Rs. 60,01,635/- by the assessee*

company without appreciating the nature of expenses and the business module of the assessee company, thus the expenses as claimed deserve to be allowed.

**AY 2006- 07:**

1. On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming the disallowances made out of following expenses arbitrarily without appreciating the nature of expenses incurred vis-à-vis expediency, thus the disallowances so confirmed deserves to be deleted.

S. No.	Nature of Expenses	Amount claimed	Amount disallowed
i	Sales Promotion Exp.	6,10,01,834.00	8,74,863.00
ii	Telephone Exp.	1,53,68,283.00	5,00,000.00
iii	Deepawali Exp.	17,27,146.00	3,45,429.00
iv	Travelling Exp.	80,25,173.00	8,02,517.00
V	Business Exp.	3,22,370.00	67,474.00
vi	Other Expenses	1,95,28,932.00	5,00,000.00
vii	Vehicle Running Exp.	23,02,020.00	2,30,202.00
viii	Event Management Exp.	3,26,77,152.00	5,00,000.00
ix	Foundation Day exp.	21,70,492.00	1,08,524.00

- 1.1 Ld. CIT(A) erred in ignoring the crucial facts that seven heads of expenses (S.No. 1 to 8) mentioned in ground no. 1 have suffered The Fringe Benefit Tax (FBT) thereon, which stands paid by assessee. The FBT paid by Assessee Company on these expenses is more than the tax that is payable on the amount of expenses disallowed.

2. *Ld. CIT(A) erred in confirming the disallowance of Rs. 64,88,084/- out of Marketing and Survey Expenses legitimately incurred by the assessee wholly and exclusively for the purposes of its business.*

**AY 2008-09:**

1. *On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming the ad hoc disallowances of Rs. 5,00,000/- out of general / other expenses incurred by the assessee wholly and exclusively for its business.*
2. *Ld. CIT(A) erred in sustaining disallowance of Rs. 43,36,835/- out of Marketing and Survey Expenses incurred wholly and exclusively for its by the assessee.*

**Revenues' grounds of appeals:**

**ITA No. 573/JP/2012 for A Y 2006-07:-**

*“On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in:-*

- (i) *deleting addition of Rs. 2,42,454/- made by the AO on account of disallowance out of depreciation on vehicle for personal / non-business use despite confirming disallowance out of vehicle running expenses for personal / non-business use.*
- (ii) *allowing additional depreciation of Rs. 26,70,913/- without appreciating the fact that printing of paper cannot be considered as producing a new article or thing.”*

**ITA No. 574/JP/2012 for A Y 2008-09:-**

*“On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in:-*

- (i) *allowing additional depreciation of Rs.35,31,480/- without appreciating the fact that printing of paper cannot be considered as producing a new article or thing.”*

2.1 Brief facts are-Assessee is a private limited company engaged in the business of printing & publishing of newspaper & periodicals, production of TV serials & documentaries and event management. It publishes a widely read newspaper “Rajasthan Patrika” in Rajasthan. Regular books of accounts are maintained which are supported by vouchers and record and are duly audited. Returns of income were filed based thereon. During the course of impugned assessment proceedings Id. AO asked about the genuineness and business expediency of various expenses incurred, assessee claims to have filed all the relevant details and explanation in this behalf. Nature, genuineness, business expediency, and regular incurrence of these expenses is claimed to be demonstrated by the assessee. Id. AO however did not agree with the submissions made huge disallowances out of various heads of expenditure in all these years. Aggrieved assessee preferred first appeals contending that multiple disallowances were made by AO purely on the basis of adhocism, suspicion, assumptions, and without assigning specific reasons.

2.2 Id. CIT(A) allowed part relief by reducing the estimates. Aggrieved assessee is before us in these years.

2.3 The relevant year wise charts of disallowance made by AO, part relief given by the CIT(A) and remaining disallowances are as under:-

AY: 2005-06

S. No.	Name	Amount claimed	Amount disallowed by AO	Addition sustained by CIT(A)	Relief granted by CIT(A)
1.	Sales Promotion & Publicity Exp.	7,67,50,154	38,37,508	13,90,047	24,47,461
2.	Telephone Exp.	1,27,11,214	5,00,000	5,00,000	NIL
3.	Deepawali Exp.	20,65,215	4,13,043	4,13,043	NIL
4.	Travelling Exp.	96,58,750	9,65,875	9,65,875	NIL
5.	Business Exp.	11,23,657	2,24,731	2,24,731	NIL
6.	Other Exp.	2,49,05,438	5,00,000	5,00,000	NIL
7.	Rates & Taxes	2,87,205	2,87,205	NIL	2,87,205
8.	Vehicle running exp.	21,15,770	2,11,577	2,11,577	NIL
	Depreciation on Cars	28,89,739	2,88,974	NIL	2,88,974
9.	Event Management Expenses	1,09,41,330	5,00,000	5,00,000	NIL
10.	Patrika Junction Exp.	1,07,452	99,393	NIL	99,393
11.	Mgt. / Staff Training Exp.	7,03,176	3,51,588	3,51,588	NIL
12.	Marketing & Survey Exp.	2,35,12,583	60,01,635	60,01,635	NIL
13.	Foundation day ceremony Exp.	40,54,240	4,05,424	2,02,712	2,02,712
	Total	17,18,25,923	1,45,86,953	1,12,61,208	33,25,745

A Y 2006-07

S. No.	Name	Amount claimed	Percentage /ad-hoc disallowance	Amount disallowed	Deletions made/relief allowed by Ld. CIT(A)	Additions sustained by Ld. CIT(A) (In Rs.)
1.	Sales Promotion & Publicity Exp.	6,10,01,834	5%	30,50,092	21,75,229	8,74,863
2.	Telephone Exp.	1,53,68,283	Lump sum	5,00,000	-	5,00,000

3.	Deepawali Exp.	17,27,146	20%	3,45,429	-	3,45,429
4.	Travelling Exp.	80,25,173	10%	8,02,517	-	8,02,517
5.	Business Exp.	3,22,370	20%	64,474	-	64,474
6.	Other Exp.	1,95,28,932	Lump sum	5,00,000	-	5,00,000
7.	Vehicle running exp.	23,02,020	10%	2,30,202	-	2,30,202
	Depreciation on Cars	24,24,544	10%	2,42,454	2,42,454	NIL
8.	Event Management Expenses	3,26,77,152	Lump Sum	5,00,000	-	5,00,000
9.	Marketing & Survey Exp.	3,08,87,002	-	64,88,084	-	64,88,084
10	Foundation day ceremony Exp.	21,70,492	10%	2,17,049	-	1,08,525
11	Additional Depreciation Exp.	26,70,913	-	26,70,913	26,70,913	NIL
	Total	17,91,05,861		1,56,11,214	50,88,596	1,04,14,094

**2008-09**

S. No.	Name	Amount claimed	Percentage /ad-hoc disallowance	Amount disallowed	Additions sustained by Ld. CIT(A)
1.	Sales Promotion & Publicity Exp.	3,86,63,770	5%	19,33,189	NIL
2.	Telephone Exp.	1,76,64,815	Lump sum	5,00,000	NIL
3.	Festival celebration Exp.	22,46,220	20%	4,49,244	NIL
4.	Travelling Exp.	1,89,30,074	10%	18,93,007	NIL
5.	Hospitality/Business Exp.	19,94,915	20%	3,98,983	NIL
6.	General/Other Exp.	3,82,68,784	Lump sum	5,00,000	NIL

7.	Vehicle running exp.	26,04,198	10%	1,30,210	5,00,000
8.	Marketing & Survey Exp.	4,83,31,693	10%	43,36,835	43,36,835
9.	Foundation day ceremony Exp.	17,88,930	Lump Sum	1,78,893	NIL
10.	Additional Depreciation Exp.	35,31,480	-	35,31,480	NIL

2.4 Apropos Sale promotion and Publicity expenses ld. Counsel for the assessee contends that the Break-up of the expenses in AY 2005-06 is under, facts in respect of other years are by and large same:-

Particulars	Amount (Rs.)
Scheme Gifts	5,68,91,082
Other Gifts	4,09,038
Food & refreshment	9,24,928
Frigate & Cortege	9,84,814
Travelling	2,90,934
Hotel Booking	70,510
Publicity Expenses	1,29,08,833
Events & Fairs	21,95,508
Others	20,74,503
Total	7,67,50,153

2.5 Ld. Counsel Shri O P Agrawal, FCA contends that all the expenditure raised in these appeals have been allowed in all the years till 2004-05. Assessee duly complied with. All the quarries raised by ld. AO, there is no allegation of any noncooperation. Without finding any specific defect in the compliance or books of accounts, ld. AO merely on suspicions and by summary observations disallowed 5% of entire expenditure amounting to Rs. 38,37,508/-, which is purely based on



sweeping and vague observations which are common for all AYs and are reproduced below:

A.Y. 2005-06 - AO Page 4

*“The assessee's submission is thoroughly examined. The reply of the assessee carries some weight but cannot be accepted in totality. Since these expenses are primarily in the nature of entertainment and as such these expenses cannot be said to have been incurred wholly and exclusively for business purpose. Further the expenditure incurred under these heads, for non-business can neither be denied nor ruled out as evident from the nature of expenses noted in the submission above like food and refreshments, traveling and conveyance, hotel booking. Event & fair and others etc. Even the evidences for distributing the gifts also remains unverified. Therefore, for want of verification and element of non-business use involved in them 5% of these expenses are disallowed and added back to the total income of the assessee. Therefore, disallowance @ 5% i.e. Rs. 38,37,508 is made and same is added back to the total income of the assessee .”*

AO Page 5 - A.Y. 2006-07

*“The assessee's submission is thoroughly examined. The reply of the assessee carries some weight but cannot be accepted in totality. Since these expenses are primarily in the nature of entertainment and as such these expenses cannot be said to have been incurred wholly and exclusively for business purpose. Further the expenditure incurred under these heads, for non-business can neither be denied nor ruled out as evident from the nature of expenses noted in the submission above like food and refreshments, traveling and conveyance, hotel booking. Event & fair and others etc. Even the assessee has not submitted any evidences in support of its contention that the gifts were given to various customers under the schemes to Hawkers, selling agents etc. So the same also remains unverified. Therefore, for want of verification and element of non-business use involved in them 5% of these expenses are disallowed and added back to the total income of the assessee. Therefore, disallowance @ 5% i.e. Rs. 30,50,092/- is made and same is added back to the total income of the assessee.*

AO Page 4 - A.Y. 2008-09

*‘The assessee's submission is thoroughly examined. With due regards, the judicial pronouncements as relied by the assessee are not fully applicable in the case of the assessee. The reply of the assessee carries some weight but cannot be accepted in totality.*

*Since these expenses are primarily in the nature of entertainment and as such these expenses cannot be said to have been incurred wholly and exclusively for business purpose. Further the expenditure incurred for non-business can neither be denied nor ruled out as evident from the nature of expenses noted in the submission above like food and refreshments, traveling and conveyance, hotel booking, event & fair and others etc. Even the assessee has not submitted any evidences in support of its contention that the gifts were given to various customers under the schemes to Hawkers, selling agents etc. So the same also remains unverified. The assessee has also not furnished any substantial evidence as to the persons to whom such benefits/facility etc. provided were actually fruitful towards promoting the sales of the assessee company. Therefore, for want of verification and element of non-business use involved in them 5% of these expenses are disallowed and added back to the total income of the assessee. Therefore, disallowance @ 5% i.e. Rs. 19,33,189/- is made and same is added back to the total income of the assessee.*

*Reliance is placed on the following judgement.*

*Meaning of wholly and exclusively – The adverb ‘Wholly’ in the phrase laid out or expended for business refers to the quantum of expenditure. The adverb ‘exclusively’ has reference to the object or motive of the Act behind guest house expenses expenditure. Unless such motive is solely for promoting the business, the expenditure will not qualify for deduction. C.J. Patel & Co. vs. CIT 158 ITR 486 (Hon'ble Gujarat High Court in the case of.) vs. ITO*

*Connection between Expenditure and object must be real and not remote or illusory DIT vs. Health & Co. (Calcutta) (P) Ltd. 14 ITR 605 (Cal.)*

*It is well settled by now that all expenditure incurred by the assessee though voluntary i.e. not obligatory, which is ultimately designed to further the objects and purposes of the assessee can be treated as business expenditure so long as the connection between the expenditure incurred and the objects is real and not remote and illusory.*

2.6 Aggrieved assessee preferred 1<sup>st</sup> appeals contending that detailed submissions and evidence was filed before Id. AO, nature of business operations had widened and turnover had increased. Adhoc disallowance of 5% out of sales promotion and publicity expenses made by AO was based purely on suspicions and summary assumptions, it should be deleted. Ld. CIT(A) though found merit in assessee's contentions, instead of deleting the entire additions reduced it to Rs. 13,90,047/- by following observing that in other expenditures viz. Telephone, Festival Celebrations, Travelling, Hospital, Vehicle Running, Other miscellaneous there may be possibility of personal element therein. Thus without specifying even a single item of personal use partial disallowance has been retained in ad hoc manner. Further by a surprising action Id. CIT(A) qua the expenditure of Rs. 69,50,238/- incurred on scheme gifts and publicity expenses during the course of its business, without issuing any enhancement notice or providing a hearing hearing enhanced the 5% disallowance made by AO to 20% amounting to Rs. 13,90,047/-. The impugned enhancement was carried out by Id. CIT(A) on mere vague and sweeping observations that - the assessee failed to prove that amount was wholly and exclusively incurred for business purposes; it was not subject to verification; personal element may be involved and to plug any possible leakage of revenue. Ld. AO verified and held 5% as adhoc disallowable, most of which is

deleted by Id. CIT(A); without observing any aggravating adverse fact the enhancement is carried out which is highly unjustified and arbitrary.

2.7. During the course of assessment proceedings, the assessee produced all the bills and vouchers along with the books of accounts before the Ld. AO, which is also observed Id. CIT(A) in his order. Besides, the nature of the expenses, necessary details and incurring thereof during the course of business was duly explained vide submission dated 27.12.2007 & 14.03.11, reproduced at page 2 to 3 of the assessment order. A perusal thereof clearly spells out that assessee reasonably discharged its onus in demonstrating that same was incurred wholly and exclusively for the business of the assessee.

2.8. These disallowances have a history as all of them have been allowed in favor of the assessee in A.Ys. 1992-93 to 1997-98, 2000-01 and 2001-02 by the ITAT, a compilation of the orders of the ITAT in this behalf along with chart of the year-wise additions and relief awarded by ITAT is tabulated at **PB 47-50**.

2.9. Adverting to ITAT order for AY 2004-05, it is contended that originally all other disallowances (except 5% out of Sale promotion & scheme gifts) were deleted by Ld. CIT(A) which was accepted by the department. Assessee challenged the remaining 5% additions out of sales promotion, ITAT set aside the issue for fresh consideration. Ld. AO repeated the additions by order Dtd 29-12-10, in first appeal Id. CIT(A) vide order dtd. 16-1-14 deleted these disallowance which has become

final as it is not challenged by the department. It is vehemently contended that no defects in books of accounts are alleged in these years and in view of this demonstrative history the issues about these expenses being wholly and exclusively incurred for business are consistently allowed. It is a travesty of justice and inconsistency on the part of the department to adopt a flip flop attitude and go on indiscriminately making disallowances every year by resorting to arbitrary and ad hoc disallowances and seriously violate the principle of consistency. Honble Supreme Court in the case of Radh Swami Satsang 193 ITR 321 has squarely held that principle of consistency being squarely applicable to Income Tax proceedings.

2.10. Adverting to the merits of expenditure, it is contended that the authorities below treated the entire expenses as entertainment expenses without appreciating the true nature thereof. Assessee as per regular practice incurred expenditure on scheme gifts, freight and cartage, travelling, publicity expenses, event and fair expenses etc. Out of the total expenses of Rs. 7,67,50,153/- only a sum of Rs. 9,95,438/- was incurred towards - Food & refreshment Rs. 924928/- + Hotel Booking Rs. 70,510/-. This also was incurred on the meetings of the advertisement and selling agents by the assessee organized for business consideration to get proper field feedback and apprise them of periodical commercial targets. These expenditure on food / refreshment during such stay in conferences of advertising

agents constitutes essential tools of assessee's business and is undeniably incurred wholly and exclusively for business purposes. These are incurred as a regular feature for dealers as a business policy with the motive to boost its sales. Out of total receipts of Rs. 143.16 crores - receipts from sale of newspaper constitute Rs. 58.21 crores – advertisement receipt are to the tune of Rs. 84.71 crores as tabulated at **PB 213**. Without any justifiable reason and merely on suspicions unjustified disallowances of Rs. 13,90,047/- is sustained by Id. CIT(A).

2.11. Lower authorities have failed to appreciate these crucial aspects that advertisement receipts are the backbone of media business could not be achieved without the participation of advertisement agencies. The advertisement receipts increased to Rs. 84.71 crores from Rs. 73.72 crores in AY 2005-06 and increase is there in other years; these facts fully justify the business nature of expenditure in this behalf. It is contended that the amount spent on food / refreshment and stay of the advertising agents is wholly and exclusively for business purpose and by no stretch of imagination can be held as entertainment in nature.

2.12. Reliance is placed on the ratio laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Modern Bakeries India Ltd. reported in 249 ITR 465 – In this case assessee incurred expenses on account of lunch and dinners served to the guests from various branches which stood disallowed. In appeal, Hon'ble Delhi High Court, observed that the expenditure incurred for extending customary

courtesy to persons connected with the assessee's business is in fact incurred for the purpose of its business, they are not cover under the word "entertainment" and therefore, the same is an allowable expenditure because it was necessary for its efficient conduct of business.

2.13 Since the facts of the case for year under appeals are same the principle of consistency as enunciated by Hon'ble Supreme court in Radha Soami Satsang (supra) is squarely applicable. Revenue cannot flip flop every year and subject the assessee to repetitive litigation.

2.14 Under the miscellaneous expenses head, Rs. 7,67,50,153/- was claimed. Assessee submitted all the supporting evidence. Rs. 20,74,506/- was incurred on cash petty expenses by field operatives for business purposes; this constitutes only 2.7% of the total expenditure. Considering the imperative fact that lot of services and material is to be procured from unorganized sector which insist for cash payments, this negligible amount supported by self-made vouchers constitute admissible evidence. Books of accounts have not been rejected or questioned; the expenditure is debited in books on day to basis in regular course of accounting. Thus looking at the volume of business activities, necessities of petty expenditure the negligible 2.7% expenditure supported by self-made vouchers cannot be disallowed. Reliance is placed on:

**CIT Vs. Avery Industries Ltd. -206 CTR 347( P&H)** - wherein it has been held that the gift items to dealers and selling agents are fully allowable as business expenditure. simillar ratio has been laid down in following judicial pronouncementsalso:

Hero Honda Motors Ltd. Vs. JCIT 103 ITD 157 (Del.)

CIT Vs. Bhagwan Das ShobhaLal Jain 60 ITD 118 (Jabalpur)

CIT Vs. Varinder Agro Chemicals Ltd. 205 CTR 324 (P&H)

Empire Jute Co. Ltd. Vs. CIT 124 ITR 1(SC)

*at is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency.*

S.A. Builders Vs. CIT 158 Taxman 74 (SC)

*Section 37(1) of the Income Tax Act, 1961 – Business expenditure – Allowability of – Assessment years 1990-91 and 1991-92 – Whether expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency – Held, yes.*

2.15 Apropos expenses other than Sales promotion and publicity expenses disallowed at Rs. 38,69,526 out of the total expenses of Rs. 6,82,78,790/- under various heads; Ld. CIT(A) failed to quote a single specific example being for non business purpose. Besides it is trite law that the Ld. AO could step into the shoes of a businessman to decide how & why a particular expense should be incurred.

2.16 Adverting to other partially sustained expenses following contentions are raised by the assessee.



**Telephone Expenses:**

2.17 It is submitted that the assessee's business of mass media including publication of newspapers and event management requires extensive use of telephones and communication devices. These are essential tools of business besides the need of large set-up spread over across India, the telephone expenses incurred at various branches is wholly and exclusively for the purpose of the business.

**Diwali Expenses:**

2.18 Likewise, the Diwali Expenses have been incurred during the period of Diwali Festival, specifically towards the articles / gifts given by the assessee company to its business associates and other connected persons to maintain healthy business relationship which is necessary for the advancement of the business objectives of the assessee company. In this regard reliance is place on Revenues own instructions issued by CBDT [13/A/20/68 dated 03.10.1968] emphasizing that the Diwali and Muhurat expenses could not be held as disallowable while examining the genuineness of the expenses claimed by the assessee. There is no finding by lower authorities that these expenses were not genuine

**Travelling Expenses:**

2.19 A sum of Rs. 9,65,875/- being 10% was disallowed by alleging that these were incurred for non-business purposes. It is submitted that they were incurred on the local and foreign travelling of the directors and staff of the assessee company

and the necessary details containing the details of person travelled, place of travel and purpose of the same were submitted before the Ld. AO who without examining their nature and the purpose of the visit with the business activity and necessity has made a lump sum disallowance of 10% by making general observations. While making these additions the Ld. AO completely lost sight of the nature of business in which assessee company is engaged, wherein, travelling by staff persons as well as executives of the company is a necessary factor for the purpose of collecting information / news items / interviews etc. and other purposes. Further the travelling undertaken by directors outside India in relation to the procurement of machines was duly capitalized details of which were also submitted thus the remaining traveling undertaken by directors were for the purpose of business specially when one of the relatives of the directors or the staff traveled stays in the countries traveled. The travelling under taken by staff cannot be held as incurred for personal purposes as the same was incurred in relation to provide incentive to them and is part of the business. This crystal clear fact was ignored by Ld. CIT(A) as well, therefore, the disallowance made on account of travelling expenses deserves to be deleted.

**Business Expenses:**

2.20 A sum of Rs. 2,24,731/- being 20% of total expenses claimed under this head was disallowed which includes the expenses incurred on the visits of

representatives, suppliers and news line dignitaries who visited the office of the assessee company and its branches resulting into publicity and media coverage both print as well as electronic media. Ld. AO completely ignored the assessee's explanation dated 27.12.2007.

### **Other Expenses**

2.21 A sum of Rs. 5,00,000/- was disallowed out of other expenses claimed in Profit & Loss Account. The other expenses claimed includes the expenses like washing charges, general expenses, payment to various employees against their claims of transport circulation, recovery work, remuneration of temporary employees etc. These expenses were petty in nature and merely disallowed for the reason that they have been incurred in cash, they have been doubted by grossly ignoring the necessity and the purpose of the expenses incurred. Further the branch-wise details of the expenses incurred along with the copies of the respective accounts were submitted before the AO who failed to point out a single expense incurred for non business purpose and has made the lump sum disallowance out of the same.

### **Vehicle Running Expenses:**

2.22 A sum of Rs. 2,11,577/- was disallowed out of total expenses claimed at Rs. 21,15,770/-; assessee company is managed by the independent professionals and directors. The assessee is a separate juristic legal entity and the necessary perquisite value of the facility of vehicle used by the directors and employees have

separately been shown in their individual tax returns therefore further disallowance of the same out of the expenses claimed by the assessee company is not justifiable. As the company is separate legal entity and thus question of any personal user does not arise.

**Event Management Expenses:**

2.23 A sum of Rs. 5,00,000/- was disallowed out of total expenses claimed at Rs. 1,09,41,337/-. In this regard, it is submitted that out of the total receipt from event management activity at Rs. 2,28,16,642/- (**PB 213**) a sum of Rs. 1,09,41,337/- was claimed under various heads and a net surplus of Rs. 1,18,75,305/- was declared as income from organizing various fates and events at various places which amount other benefits help improve the advertisement and publicity. These expenses are duly supported by necessary bills and vouchers and in case of petty expenses, by self made vouchers duly authenticated and verified by the payee and endorsed by official of the assessee company. The necessity and relation with the business operations of event management cannot be doubted. These expenses incurred wholly and exclusively for business purposes deserve to be allowed.

**Management & Staff Training Expenses:**

2.24 A sum of Rs. 7,03,176/- was claimed out of which Rs. 3,51,588/- was disallowed by observing that the same pertained to subsequent assessment year. In this regard, it was the fee paid by the assessee company on the courses undertaken and completed by Shri Nihar Kothari, Managing Director of the assessee company.

Though a part of the course pertained to the succeeding assessment year however, since the fee was paid in the year under consideration and was non-refundable, therefore the same was claimed for the year under appeal. Ld. AO as well as Ld. CIT(A) did not doubt the claim but unjustifiably assumed that the course was conducted in the period pertaining to succeeding assessment years, disallowance was made which was claimed by assessee on payment basis. Since the expenditure is neither doubted nor questioned, the assessee following mercantile system of accounting is eligible for this claim as it was irrevocably incurred during the year in question.

**Foundation Day Ceremony Expenses:**

2.25 A sum of Rs. 4,05,424/- was disallowed out of total expenses claimed Rs. 40,54,240/- @ 10% which stood reduced to 5% by Ld. CIT(A). In this regard, it is submitted that the ceremony was solemnized with the object of achieving development in personal and direct interaction between the ‘selling and advertising agencies’ and the ‘employees’ of the assessee company. Another key purpose of this ceremony was to honor and appreciate the services of advertising agents who are the backbone of the assessee company. The ceremony is organized every year since the inception of company and these expenses were never disallowed. It is contended that this consistent business expenditure cannot be disallowed.

3.1 For AY 2006-07, it is vehemently contended that the disallowance has been made despite the fact that assessee had already paid Fringe Benefit Tax (FBT) on most of the a expenses. Ld. AO assessed the same u/s 115WE(3) vide orders dated 30.12.2008; value of fringe benefit as declared by assessee at Rs. 1,76,54,330/- is accepted. This double taxation demonstrates the perfunctory attitude of the department.

3.2 It is also submitted that the impugned disallowances have been made only on the basis of some vague and general observations without in any manner specifically pointing out as to why the expenses as claimed by assessee are not being allowed. The books of accounts of assessee company are duly audited as per the provisions of section 44AB were nowhere doubted by the Ld. AO and the trading results as declared by assessee has been accepted by him, therefore, no disallowance of expenses could have been made on ad-hoc basis when the corresponding receipts are accepted.

3.3 Ld. Counsel after adverting to foregoing submissions about each specific expenditure, its genuineness, business expediency on the expenditure further contends that the appellant being a company an inanimate assessable entity no personal use of expenditure can be attributed to it. Reliance is placed on Hon'ble Gujarat High Court judgment in the case of Sayaji Iron and Eng. Co. Ltd. 253 ITR 749 holding that a ltd. Company being an inanimate entity there cannot be

anything personal about it and expenses cannot be disallowed as personal expenses. Hon'ble Gujrat High Court observed as under in this behalf:

- 9.1. There is one more aspect of the matter which requires to be considered. *The assessee which is a private limited company is a distinct assessable entity as per definition of "person" under s. 2(31) of the Act. Therefore, it cannot be stated that when the vehicles are used by the directors, "even if they are personally used by the directors" the vehicles are personally used by the company, because a limited company by its very nature cannot have any 'personal use'. The limited company is an inanimate person and there cannot be anything personal about such an entity. The view that we are adopting is supported by the provision of s. 40(c) and s. 40A(5) of the Act.*

Since the disallowances of similar nature were deleted by the Hon'ble ITAT from year to year as mentioned in chart placed at **PB 47-50** keeping the settled law about the principle of consistency, all these disallowances in the assessment years 2005-06, 06-07 and 08-09 under appeals, deserve to be deleted.

3.4 Ld. DR. relied on the orders of ld. CIT(A) on these issues.

3.5 We have heard the rival contentions and perused the material available on record. Facts about assessee's regular maintenance of accounts, their non-rejection, diverse business activities, contentions, applicable case laws and past litigation history is narrated in details above and needs no repetition. We are inclined to allow grounds raised by assessee relating to retention of disallowances by ld. CIT(A) in all these years on following considerations.

- i. *All disallowances have been allowed in favor of the assessee by ITAT in A.Ys. 1992-93 to 1997-98, 2000-01 and 2001-02 a gist of the orders of the ITAT orders in this behalf finds place on **PB 47-50**. Series of orders of this bench in assessee's own case are to be respectfully followed.*
- ii. *In addition to above, for AY 2004-05 also the other additions/disallowances stood allowed to assessee and issue of 5% disallowance out of sales promotion was set aside by ITAT for fresh consideration. Ld. CIT(A) in 2<sup>nd</sup> round of proceedings allowed these expenses by latest order Dtd 29-1-14 in fresh proceedings. Revenue has accepted this order and has become final.*
- iii. *Assessee's books of accounts are maintained regularly on day to day basis and are duly audited; there is no qualification or any material adverse remark by the chartered accounts.*
- iv. *Assessee's books of accounts have not been rejected much less even doubted.*
- v. *In view of a series of favorable orders in assessee's own cases on these issues we are of the view that they are no more res integra.*
- vi. *Principle of 'Consistency' as enunciated by Hon'ble Supreme Court in Radhasoami Satsang (supra) is fully applicable to the assessee's case which has been reconfirmed by Hon'ble Supreme Court in CIT v Excel Industries Ltd. 358 ITR 295 holding as under:*

*“Secondly, as noted by the Tribunal, a consistent view had been taken in favour of the assessee, starting with the AY 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there was no reason to take a different view unless there are very*



*convincing reasons, none of which had been pointed out by the Revenue. In Radhasoami Satsang Saomi Bagh v. Commissioner of Income Tax, [1992] 193 ITR 321 (SC) Court did not think it appropriate to allow the reconsideration of an issue for a subsequent AY if the same "fundamental aspect" permeates in different AYs. It appears from the record that in several AYs, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some AYs the matter was taken up in appeal before the High Court but without any success. That being so, the Revenue could not be allowed to flip-flop on the issue further. (Para 28, 29 & 31)"*

3.6 In our considered view these judgments are fully applicable to assessee's grounds relating to disallowance in all these years. Respectfully following them the department cannot be justified in adopting a flip flop attitude and repeatedly go on disallowing the same type of expenditure year after year.

- vii. *The Hon'ble Gujarat High Court in the case of Sayaji Iron and Eng. Co. (supra) is applicable to disallowance retained alleging personal user by the company. Respectfully following it we hold that in the case of assessee being a limited company which is an inanimate person, there can be no personal expenditure. Consequently the disallowances attributed to be personal user cannot be justified and are deleted.*
- viii. *For AY 2006-07 qua the same disallowances assessee has paid more Fringe Benefit Tax (FBT). As over FBT and IT provisions if any expenditure is taxable under FBT it cannot be disallowed again in Income Tax provisions.*

3.7 Considering the entirety of above observations we have no hesitation in deleting the disallowances/additions retained by Ld. CIT(A) out of various expenses mentioned in respective grounds for AY 2005-06, 2006-07 & 2008-09 which are deleted. Grounds raised by assessee in this behalf in all these years are allowed.

4.1 Adverting to assessee's remaining grounds about following disallowance of 'Marketing and Survey expenses' in all these Years:

<u>AY</u>	<u>Disallowed Exp</u>	<u>Out of total Exps.</u>
AY 2005-06	Rs. 60,01,635/-	Rs. 2,35,12,583/-
AY 2006-07	Rs. 64,88,084/-	Rs. 3,08,87,002/-
AY 2008-09	Rs. 43,36,835/-	Rs. 4,83,31,693/-

4.2 Ld counsel for the assessee contends that as already mentioned the assessee company is engaged in publishing of the daily newspaper "Rajasthan Patrika – Hindi Daily". The "Rajasthan Patrika – Hindi Daily" with highest reader base in Rajasthan. In order to maintain its business standing, prospects and development i.e. improve reader base, meet with the local competition particularly from another newspaper DainikBhaskar in the state of Rajasthan and for other commercial reasons, it was felt as a business necessity to undertake aggressive marketing and survey operations on regular basis. Accordingly service of various independent agencies was hired for conducting door to door survey about news quality, suggestions for improvement of coverage and compilation of information from the

readers about preference between the competing newspapers of Rajasthan area.

This exercise of conducting survey provided following business advantages to the assessee company:

1. This survey give area specific information of the readers base and readers base of other newspapers so as to convert the newspaper published by the assessee company.
2. Having detailed information and profile of the readers which is beneficial for marketing team to increase the advertisement revenue.
3. Identification of those areas where vigorous marketing and promotion activities are needed to increase the sales and readership of the newspaper.
4. By such door to door survey, the company has information about the readers their liking of contents and subjects which they preferred in a newspaper.

4.3 A bare perusal of respective Schedules pertaining to – Sales & Advertisement receipts’ forming part of the audit report reflect that the revenue has increased from year to year. Assessee’s turnover progressively increased from about Rs. 124.15 crores in AY 2004-05 to Rs. 145.98 crs in AY 2005-06; Rs.1.80crs in AY 2006-07 and Rs. 2.51 crs for AY 2008-09. As compared with TO the expenditure on marketing and survey constitutes meager % of such increase in turnover i.e. differential turnover. It makes it abundantly clear that the expenses incurred for marketing and survey are very reasonable as compared to the commercial benefits achieved. For conducting such surveys, assessee appointed following independent parties in respective years namely:

- i. M/s Perfect N Marketing, Jaipur
- ii. M/s Aneu Marketing Jaipur
- iii. M/s A One Marketing

They rendered the requisite services by conducting door to door surveys in different areas on different days through their self hired team of surveyors and collected following type of information:-

1. Number of houses where the newspaper published by the assessee company is read.
2. Number of houses where any other newspaper is read.
3. Number of houses where the newspapers published by the assessee company and other both are read.
4. Number of houses where no newspaper is read.

These agencies supplied the collected information on these domains to assessee, on the basis thereof company representatives along with the surveying person visited the houses/establishment where its newspaper was not read for persuasion to read its newspaper by offering incentives like supply of free copies. Ld. AO neither doubted the other expenditure in this head nor the resultant free distribution of the newspapers.

4.4 The details of services rendered by these independent parties and their survey reports were filed during the course of assessment proceedings vide letter dated 31.12.2007 for AY 2005-06 copy thereof is filed with PB 62-74 and

subsequently for AYs 2006-07 and 08-09 with an abstract based on such survey reports. Ld. AO has not given any adverse comment on the information contained therein

4.5 The payments made to these agencies are duly vouched and supported with necessary evidence like invoices which were duly authenticated by the survey supervising staff and on verification duly cleared at level of directors for allowing such payments.

4.6 Ld. AO however disallowed the entire expenditure on following adverse inferences:

- a) The parties could not be produced for verification
- b) Inspection report that no concern exist on the address mentioned in the bill.
- c) Statement of the person residing at such address deny about the existence of any firm.
- d) Photograph of the place which has been made part of the assessment order.

Ld. AO relied on some alleged inspection report for which no opportunity of cross examination of the persons denying the existence of agencies was allowed.

Consequently the adverse inference drawn in this behalf is in violation of fundamental principles of natural justice. Besides ld. AO failed to appreciate the following crucial facts:

- 1) Assessee produced the proprietor of Perfect N Marketing Shri Hanuman Singh before the AO on 27.12.2007 i.e. the next date of hearing before ld. AO. His statement was not recorded by AO claiming pre-occupation thus

this evidenced was willfully not allowed to be brought on record. These facts were duly communicated to the AO vide letter dated 28.12.2007 (**PB 79-82**); sent by post as Ld. AO refused to take this reply on record. It was communicated to the AO that if the concerned party could not appear on next date, assessee shall not be held responsible for non-appearance as its onus stands discharged. Since ld. AO opted not to record his statements, the allegation of ld. AO is not tenable.

- 2) Copy of returns of income filed by these agencies were submitted with AO vide letter dated 27.12.2007 **PB 13-18** wherein PAN and other relevant details were duly mentioned.
- 3) Abstracts of monthly survey reports were submitted before the AO vide letter dated 31.12.2007 **PB 62-74**.
- 4) Opportunity to cross examine the persons whose statements were recorded by the inspector was asked for which was never provided despite assessee's request **PB-62**.

Ld. AO disallowed the entire expenditure in all these years. Aggrieved assessee raised these grounds in first appeal. Ld. CIT(A) however confirmed the order of ld.

AO relying mainly on following summary of observations:

- i. Initial onus to prove gaminess of the expenditure and parties was not discharged by the assessee as these parties, their bills/voucher and copy of income tax return were not filed.
- ii. Inspector was deputed who found that some other persons were residing at these address and not the parties who are claimed to have rendered services.
- iii. The daily survey reports were prepared in hurry by some layman or temporary employees of the assessee.

- iv. The bank inquiries revealed that amounts paid by assessee were by transfer entries and the amounts were withdrawn on the same day leaving balance a small amount. This all indicated that the alleged marketing and survey expenses were accommodation entries.
- v. Shri Bhanwarlal's statement was recorded by Inspector on 26-12-07; assessee as late as 17-11-2009 produced a letter from him alleging that his statement was recorded under pressure was an afterthought.
- vi. No primary record of door to door survey indicating the date of visit, name and address of surveyed house holder and working sheet with the signature of assessee's representative and survey was filed.
  - vii. The tax liability for AY 2006-07 were meager in the cases of - Shri Pushpendra Singh Prop. Anue Marketing only Rs. 16,275/1 and Shri Hanuman Singh Prop. M/s Perfect Marketing Rs. 22,632/- and Smt. Shakuntala Singh prop. A One Marketing also paid small tax.

4.7 Ld. Counsel for the assessee contends that the monthly survey reports provided by these agencies were duly submitted before the Ld. CIT(A) on 25.11.2008 to be admitted as additional evidences. A remand report was called, following documents were submitted before the Ld. AO along with the letter dated 17.11.2009 & 08.03.2011 in the remand proceedings, which are placed on the paper book:

- a) Bank statement of both the concerns for the period from 01.04.2004 to 31.03.2005.
- b) Income tax return, computation and Balance Sheet for A.Y. 2005-06.

c) letter dated 17.11.2009 from M/s Perfect N Marketing confirming that the statements recorded by the inspector were under pressure and the witness Ganesh Kumar was made to sign the statements without the knowledge about the contents thereof.

d) Copy of insurance policy issued by LIC on 28.05.2000 in the name of proprietor at the same address to corroborate the existence of the concern.

e) Statements of two independent residents near premise No. 119/504, Mansarovar confirming concerns working and existence

4.8 In remand proceedings, proprietor's of these concerns appeared before Id. AO and their statements were recorded which is admitted in the remand report. Ld. AO changed stand and doubted the rendering of service on vague reason that they were persons of small means. A detailed rejoinder on the remand report was submitted before Ld. CIT(A) which also remains uncontroverted.

4.9 Thus Id. AO failed to record the statement of the party produced by the assessee and made the additions on surmises, overlooking the vital evidence and against the principles of natural justice. It was submitted before Id. CIT(A) that the services rendered and expenditure incurred in this behalf cannot be doubted. The entire business expenditure has been incurred through account payee cheques and cleared through banks. The transactions in question were wholly and exclusively in the normal course of business; requisite TDS on these payments was made and deposited in govt. treasury. The expenditure of similar nature was also claimed in



the preceding assessment years which have been allowed as business expenditure by orders passed u/s 143(3). Facts and circumstances in the preceding years are identical to the years under appeal, on principle of consistency the AO should not be flip flop from the position which is accepted in the preceding assessment years. The credibility of inspector's report was challenged by relying on the decision of the Hon'ble Supreme Court in the case of CIT Vs. J.K. Charitable Trust reported in 308 ITR 161 and KishinchandChellaramVs CIT 125 ITR 713 (SC) where it was held that any evidence which has never seen the light of the day, could not be taken into consideration so as to warrant an addition.

4.10 The parties in question were not related to any director and their income in this behalf was disclosed and assessed by their respective returns. Assessments for A.Y. 2006-07 were completed u/s 143(3), without making any adverse remarks on these receipts, copies of their orders were submitted before Ld. CIT(A). Since department itself has accepted their identity, genuineness of existence and accepted their income for rendering these services, there was no question of disbelieving their services in assessee's hands.

4.11 It is held in the case of Indian Molasses Co. P. Ltd. v. CIT 37 ITR 66 (SC) that in order to claim deduction of expenditure u/s 37(1) following conditions should be satisfied:

- (i) The expenditure in question should not be of the nature described under the specific provisions of sections 30 to 36;
- (ii) The expenditure should not be of the nature of capital expenditure;
- (iii) It should not be a personal expenditure; and (iv) The expenditure should have been laid out or expended wholly and exclusively for the purposes of the business or profession.

The case of the assessee fulfills all the conditions laid down therefore the expenditure as claimed is allowable in terms of the provisions of section 37(1) of the Income Tax Act, 1961. It is settled law that no addition can be made on the basis of surmises, suspicion and conjectures. Reliance for this proposition is placed on 37 ITR 271 (SC) Uma Charan Shaw & Bros. Co.Vs. CIT. It has been further held in the following cases that suspicion howsoever strong cannot take the place of proof:

- 1. 37 ITR 151 Omar Salay Mohammad SaitVs. CIT
- 2. 26 ITR 736 DhirajlalGirdharilalVs. CIT
- 3. 26 ITR 775 Dhakeshwari Cotton MillsLtd. Vs. CIT
- 4. 37 ITR 288 Lal Chand BhagatAmbica Ram Vs. CIT
- 5. 91 ITR 8 CIT Vs. Calcutta Discount Company Ltd.

4.12 It is further submitted that the expenditure being incurred in the day to day business activity and is wholly and exclusively for the purpose of the business for which the AO cannot step into the shoe of the businessman to verify the necessity or the business expediency. In this regard further reliance is placed on the following decisions.

Empire Jute Co. Ltd. Vs. CIT 124 ITR 1(SC)

S.A. Builders Vs. CIT 158 Taxman 74 (SC)

4.13 In the circumstances it is pleaded that the assessee having discharged its onus to prove the rendering of services and incurring of expenditure during the course of its business the entire expenditure in respect of Marketing & Survey may kindly be deleted and entire expenditure may be allowed u/s 37(1).

4.14 Ld. Sr. DR supported the orders of lower authorities and vehemently argues that the onus of proving the genuineness of expenditure has not been properly discharged by the assessee. The explanation furnished by assessee is full of latches, ifs and buts. The alleged survey reports do not inspire any confidence and are hush documents to any how support that survey was conducted. They fail to invoke any conviction that a meticulous survey job can be completed in such a shoddy manner so as to command such huge expenditure.

4.15 We have heard the rival contentions and peruse the material available on record. As the facts emerge the record and evidence in this behalf has surfaced in piece meal and from time to time as the assessee attempted to fill in the gaps about inferences drawn by the authorities from time to time. Consequently a cohesive verification of material appears to be not made. Assessee has produced the income tax record of the survey agencies which in support of its version; there exist no reasoning as to why they are being ignored by ld. AO & CIT(A). There exist conflicting claims about the existence of such survey agencies coupled with non

supply of Inspectors report and non-allowing the customary right of cross examining the denying witnesses. Thus assessee has made out a case for violation of principles of natural justice. In the entirety of facts and circumstances we are inclined to set aside the issues relating to Marketing and Survey expenses back to the file of AO to decide afresh after considering the entire evidence and giving the assessee an adequate opportunity of being heard.

### Revenue Appeals for AYs 2006-07 and 2008-09

5.1 Ld. CIT(DR) relied on the order of ld. AO and contends that:

i) In AY 2006-07 since the expenditure for personal use of vehicles was disallowed, consequent depreciation has been rightly disallowed by AO.

ii) The activity carried out by assessee i.e. printing and publishing newspaper does not amount to manufacture or production within the meaning of section 32(1)(iia) of the Income Tax Act, 1961. Since the conditions set out in section 32(1)(iia) are not fulfilled, therefore, AO was justified in denying the additional depreciation in AY 2006-07 and 2008-09.

5.2 Ld. Counsel for the assessee contends that Sec 32(1)(iia) reads as under:

*“In the case of any new machinery or plant (other than ships and Aircraft), which has been acquired and installed after the 31<sup>st</sup> day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty percent (20%) of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii) : **Provided that no deduction shall be allowed in respect of –***

*A) any machinery or plant which, before installation by the assessee was used either within or outside India by any other person, or*

- B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of guest-house, or
- C) any office appliances or road transport vehicles, or
- D) any machinery or plant, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and gains of business or profession” of any one previous year.”

5.3 Term ‘manufacture’ has not been defined in section 32(1)(ia) of the Income Tax Act, 1961; the definition of the word ‘production’ as rendered in section 2(29BA) should be referred to which reads as under:

*(29BA) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,—*  
*(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or*  
*(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;*

5.4 A perusal of the above definition reveals that in order to term a particular activity as ‘manufacture’, following circumstances are required to exist:

1. There must be a **change** in a non living physical object/article/thing
2. That change must result into **transformation of the object into a distinct / new object.**
3. The new object is supposed to have a different name, character and use. Or, alternatively
4. That change must bring into existence a new / distinct object with a different chemical composition or integral structure.

5.5 Printing and publishing of newspaper and periodicals which are the final products emanating out of the activity carried on by the assessee. “Newspapers and periodicals” are clearly identifiable as a “product”, which is distinct from its ingredients i.e. paper and ink. Since a new commercial product is brought into existence, therefore, the process involved is production which amounts to “manufacture” as described in section 2(29BA) of the Income Tax Act, 1961.

5.6 The following activity carried on by assessee of printing and publication of newspaper fulfills all the above mentioned conditions of sec 2(29BA) which is elaborated as under:

1. That, the initial object (input) is merely a roll of paper which is trimmed into equal size of sheets and then news items / articles and other things are printed on it. Therefore, the paper used in publication of newspaper undergoes a whole some change.
2. Secondly, the change in the object as mentioned above results into a clear transformation of that object in as much as the blank and raw roll of paper is converted into newspaper which is new/distinct object as compared to the raw paper.
3. Further, it is apparent and ostensible that a newspaper has a different name, identity, character and use as compared to the raw paper and ink and other chemicals etc. utilized.

Reliance is placed on the judgment of Hon'ble Delhi High Court in the case of

**CIT vs. Delhi Press Patra Prakashan Ltd.** reported in (2013) 355 ITR 14

**(Delhi)**. On a similar issue it has been held that:

*“The raw materials used were paper, ink and other consumables which were completely distinct from the printed paper that resulted from the activities carried on in the second and third units. The printing did alter the character of the paper used and there was a distinction between the raw paper and the resultant product. The purpose and usage of a blank paper was completely different from the use and purpose of a printed magazine or periodical. Once the blank paper underwent the process of printing, the character of blank paper changed completely and the content of the printed material became the identity of a printed paper. Blank paper and the printed article are not one and the same and it cannot be said that printing carried out in an industrial undertaking would not amount to manufacturing. A printed magazine or periodical even if it is not bound has a definite identity and its usage is completely different from the blank paper on which it is printed. The expression used in section 80-1(2)(iii) is “manufacture or produce any article or thing”. The word “produce” is similar to the word “production” and while every manufacture can be characterized as production, every production need not amount to manufacture. There was no reason to exclude the printed paper produced by the assessee in its second and third units from the ambit of the expression “article” or “thing”. The language of section 80-I(2)(iii) thus clearly indicates that the second and third units did “manufacture or produce an article or thing”. Thus, even if the printed material, as produced by the second and third units, was taken as an intermediate product which required to be further bound for making it marketable, the word “produce”, occurring in section 80-I(2)(iii), would include it within its ambit.”*

In the abovementioned case, it has clearly been held that “printing” amounts to

“manufacture / production” and therefore it was held that the assessee was eligible

for deduction u/s 80I(1)(iii). This judgment was followed by the Cochin Bench of

Hon'ble ITAT in the case of **DCIT Vs. M/s. Mathrubhumi Printing and**

**Publishing Co. Ltd** wherein it was held that the printing and publication of newspaper amounts to 'manufacture' consequently, assessee is entitled to additional depreciation u/s 32(1)(ia).

5.7 Further as regard to non claiming the additional depreciation in earlier years, it is submitted that the provision for claiming additional depreciation under section 32(1) (ia) of the I.T. Act,1961 was firstly introduced by Finance Act 1980 w.e.f. 01-04-1981 which was omitted by taxation law (amendment & miscellaneous provisions) act 1986 w.e.f. 01-01-1988 but again reintroduced by Finance Act 2002 w.e.f. 01.04.2003 which was amended by finance Act 2004 w.e.f. 01-04-2005 and finally amended by finance Act 2005 w.e.f. 01-04-2006, it is submitted that the additional depreciation is available only on **new plant or machinery**. In these years assessee purchased new machines which were installed at various branches, therefore it is entitled to claim the additional depreciation in the years under consideration.

5.8 Ld. CIT(A) in behalf of allowing the same has observed as under:

*"13.11 I have duly considered the submission of the appellant. During the year under reference, the appellant had claimed additional depreciation of Rs. 35,31,480/- on the new plant & machinery installed in its branches. The AO was of the opinion that the appellant was not engaged in any manufacturing activities or production of any article or thing. The AO held that printing on paper did not tantamount to any manufacturing activity as no new commodity had come into existence. The AO was aggrieved with the fact that no such additional depreciation was claimed in the earlier years though it was admissible. Therefore the AO*



*disallowed the claim of additional depreciation of Rs 35,31,480/- On careful consideration of facts, I am inclined to accept the arguments of the appellant. During the year under reference, new printing the roll of paper with the help of machinery and therefore it was producing a new article and thing. It was engaged in the production of newspapers and periodicals. All the conditions as stipulated in section 32(1) (iia) were satisfied by the appellant and even the assessee engaged in the production of an article or thing was also entitled to the additional depreciation. Since no new printing machines were purchased in the earlier year therefore no such claim of additional depreciation was made. Since the word "production" was not defined in the Income Tax Act therefore it was imperative to construe its general meaning. The word "production" refers to applying human endeavor on some existing raw material. Therefore ever manufacture could be characterized as production, but every production did not amount to manufacture. The Hon'ble Rajasthan High court in the cases of ITO Vs Arihant Tiles & Marble Pvt. Ltd. (295 ITR 148) has held that sawing of marble blocks into slabs and tiles amounted to production and therefore the assessee was entitled to deduction u/s 80IB of the IT Act, This decision is fully applicable to the facts of the present cases. I therefore direct the AO the allow the claim of additional depreciation of Rs 35,31,480/- to the appellant. This ground of appeal is allowed. "*

It is thus submitted that Id. CIT(A)'s decision being in conformity of sec. 32(1)(iia) and the judicial precedents cited above, same deserves to be upheld.

5.9 We have heard the rival contentions and perused the material available on the record regarding the issue of additional depreciation. In our considered view news papers and periodicals are distinct commodity than the paper, printing ink and other ingredients used therein. Since a new commercial product comes into existence, the process involved for such transformation amounts to production and manufacture. Our view is fortified by Hon'ble Delhi High Court and ITAT benches

of Cochin and Ahmedabad. Respectfully following them we uphold the orders of ld. CIT(A) on this issue of additional depreciation. Apropos AY 2006-07, since relying on Sayaji Iron and Engg. Case (supra), we have already held that, there can be no attribution of personal user in case of a limited company, the order of ld. CIT(A) deleting the disallowance of depreciation in this behalf is upheld. Revenue appeals are thus dismissed.

6.0. In the result assessee's 3 appeals are partly allowed for statistical purposes and 2 revenue appeals are dismissed.

Order pronounced in the open court on 15/06/2015

Sd/-  
(टी.आर.मीना)  
(T.R. Meena)

लेखा सदस्य / Accountant Member

Sd/-  
(आर.पी.तोलाणी)  
(R.P.Tolani)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15<sup>th</sup> June, 2015

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Rajasthan Patrika (P) Ltd. , Jaipur
2. प्रत्यर्थी / The Respondent- The Addl. CIT , Range-5, Jaipur / ACIT, Circle-5, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 519/JP/2012)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar