

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 5162/DEL/2012 ( A.Y 2013-14)**

DCIT Circle 16(1) Room No. 312, C. R. Building New Delhi AAFCM1533J <b>(APPELLANT)</b>	Vs	Mail Today Newspapers Pvt. Ltd. F-26, Connaught Place New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Parmita M. Biswas, CIT DR</b>
<b>Respondent by</b>	<b>Sh. Salil Aggarwal, Adv &amp; Sh. Satish Gupta, Adv</b>

<b>Date of Hearing</b>	<b>08.06.2020</b>
<b>Date of Pronouncement</b>	<b>11.06.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 13/6/2017 passed by CIT(A)-37, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

“1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of expenditure of Rs. 11,41,12,337/- incurred on advertisement and sales promotion of product, brand promotion, development of market and customer relations

*made by the Assessing Officer (the AO) being capital in nature, by ignoring a fact that the expenditure was incurred on development of various intangibles as defined under sub-clause (a), (f) and (I) of clause (ii) of Explanation below sub-section(2) of Section 92B of the Income Tax Act, 1961 (the Act)?*

2. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of expenditure of Rs.11,41,12,337/- incurred on development of intangibles by overlooking provisions of Clause (II) of Explanation below sub-section (2) of Section 92B of the Act r.w.s 32(1)(ii) of the Act?"*

3. The assessee company was incorporated on 09.05.2007. It publishes 'Mail Today', an English Daily newspaper and further displays its publication on 'mailtoday.in'. It derives revenue from the sale of the said publications and advertisements published therein. Return declaring loss of Rs. 28,33,36,161/- was e-filed on 28.11.2013 by the assessee. The assessee claimed expenses of Rs. 11,41,12,337/- on account of advertisement and sales promotions. The Assessing Officer observed that the amount of advertisement and sales promotion incurred in the initial stage of business, (this being fifth year of operations) by the assessee, is considered as capital in nature due to two reasons. First it has been incurred in the initial stage of the commencement of the business of the assessee and secondly it is going to give enduring and long term benefits to the assessee. Therefore, the Assessing Officer held that the claim of Rs. 11,41,12,337/- on account of advertising and sales promotion expenses is treated as capital in nature. The Assessing Officer further held that the nature of these expenses is not depreciable and thus, disallowed the depreciation claim on this expense.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR relied upon the Assessment Order and submitted that the Assessing Officer rightly disallowed the claim of the assessee as these expenses incurred in the initial stage of the commencement of the business of the assessee and it is going to give enduring and long term benefits to the assessee. Thus, it is capital in nature. The Ld. DR further submitted that the depreciation cannot be allowed in the present case as the same is not coming under the purview of specified intangibles. Thus, the Ld. DR submitted that the CIT(A) was not right in allowing the appeal of the assessee and the assessment order be upheld.

6. The Ld. AR submitted the chart showing brief history of advertisement and sales promotion expenses as claimed by the assessee and treatment accorded by Revenue as under:-

S No.	Assessment Year	Expenditure claimed in P & L Account	Assessment Order u/s 143(3) and status of disallowance by AO (whether allowed or disallowed)	Status of disallowance before CIT(A)	Status in ITAT	Status in High Court
1	2008-09	120167272	Disallowed by AO	Allowed by Ld. CIT(A)	No appeal in Hon'ble ITAT by Department	N.A
2	2009-10	197800334	Allowed u/s143(1)	N.A	N.A	N.A
3	2010-11	93729000	Disallowed by AO	Allowed by Ld. CIT(A)	Departmental Appeal dismissed by Hon'ble	Departmental Appeal dismissed by Hon'ble Court of Delhi

					ITAT	
4	2011-12	158234858	Disallowed by AO	Appeal is pending before CIT(A)	N.A	N.A
5	2012-13	128604197	Disallowed by AO	Allowed by Ld. CIT(A)	Departmental Appeal dismissed by Hon'ble ITAT before ITAT	No appeal preferred by Department in High Court
6	2013-14	114112337	Disallowed by AO	Allowed by Ld. CIT(A)	Impugned Appeal	N.A

Thus, the Ld. AR submitted that the issue is decided in favour of the assessee at the appellate stage by the Tribunal and the Hon'ble High Court. Therefore, the Ld. AR prayed that the present appeal be dismissed.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the issue contested in the present appeal by the Revenue has already been decided in favour of the assessee for A.Y. 2010-11 as well as A.Y. 2012-13 by the Tribunal. In fact, the Hon'ble High Court confirmed the order of the Tribunal in A.Y. 2010-11. The Hon'ble High Court in A.Y. 2010-11 (Pr. CIT vs. Mail Today Newspapers Pvt. Ltd. order dated 17.01.2018) held as under:

*“The question of law urged in this appeal under Section 260A of the Income Tax Act, 1961 (‘the Act’) by the Revenue is with respect to the correctness of the Income Tax Appellate Tribunal’s (ITAT) decision that Rs.9,37,29,000/-, which had been disallowed from the sales promotion expenditures by the Assessing Officer (AO), fell in the revenue stream rather than the capital stream. The assessee was engaged in the business of publication of newspaper and periodicals; its revenue is derived from the sale of publication and advertisements published in such newspapers. The*

assessee claimed expenditure to the tune of Rs. 18.82 crores as sales promotion expenses. Justifying such expenses, the assessee relied upon various heads of its expenditures. The AO was of the opinion that the expenditure was unduly high for a new entrant and disallowed half the amount i.e. Rs. 9,37,29,000/-. It was held that the amount was in all probability, meant to create an asset i.e. brand of an enduring nature and thus, fell in the capital stream. The CIT(A) disagreed and set aside the AO's decision. The ITAT affirmed that judgment.

Learned counsel relied upon the judgment in *Empire Jute Co. Ltd. vs. Commissioner of Income Tax*, (1980) 124 ITR 1 (SC) to say that the ratio of that judgment fairly implies to lead to conclusion that the high degree of expenditure in this case and disallowed by the AO, actually meant creation of an asset or resulted in an enduring capital advantage to the assessee.

This Court is of the opinion that the concurrent findings on the question urged, are justified. As to the nature of advertising expenditure, the pointed decision of the Court in *Commissioner of Income Tax vs. Salora International*, (2009) 308 ITR 199 was decisive. The advertence to *Empire Jute's* case (*supra*), is not apt in the circumstances of the case. The Court further recollects that later decision in *Alembic Chemical Works Co. Ltd. vs. CIT* (1989) 177 ITR 377 has cautioned the administrative authorities and the Courts from applying hitherto the administrative authorities and the Courts from applying hitherto bright line test to expenditure resulting in a capital advantage based upon traditional notions.

For the foregoing reasons, no substantial question of law arises. Appeal is therefore, dismissed.”

Thus, the issue involved in the present case is also identical. The advertisement and sales promotion expenses incurred by the assessee are merely for the purpose of publicity of trade name/brand name which results into enhancement of sales. Therefore, the CIT(A) was right in allowing the

appeal of the assessee as the issue is already covered in earlier years. The appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on 11<sup>th</sup> June, 2020.**

**Sd/-  
(R. K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 11/06/2020  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	10.06.2020
Date on which the typed draft is placed before the dictating Member	10.06.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	12.06.2020
Date on which the final order is uploaded on the website of ITAT	12.06.2020
Date on which the file goes to the Bench Clerk	12.06.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	