IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.296 OF 2013

The Commissioner of Income Tax-8. ...Appellant.

Vs.

M/s.Fine Jewellery (India) Ltd. ...Respondent

.....

Mr.Arvind Pinto, for the Appellant.

None for the Respondent.

.....

CORAM: M. S. SANKLECHA &
G. S. KULKARNI, JJ.

DATE : 3rd FEBRUARY, 2015.

P.C.:-

1. This appeal under Section 260A of the Income Tax Act,1961 (the Act) challenges the order dated 31.7.2012 passed by the Income Tax Appellate Tribunal (the Tribunal). The Assessment Year involves is AY 2006-07.

2. The Revenue has raised the following questions of law for our consideration:-

> "(1) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in quashing the order under Section 263 of the Income Tax Act,1961 as undoubtedly, the expenditure of Rs.2.94 crores was incurred to create the brand "Nirvana" - an intangible asset ?
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> (2) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in taking the view that the expenditure incurred by the assessee did not result in any kind of

addition or augmentation of any profit making asset, when the assessee company itself has admitted that the expenditure was incurred for the creation of a brand 'Nirvana' that is an intangible asset ?

(3) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in coming to the finding that the said expenditure was related to the conduct of the business whereas the expenditure in question related to the building up of the brand which was of a permanent character and not of routine revenue nature ?"

3. The question nos.2 and 3 framed by the Revenue are mere facets of the issue raised in question no.1.

4. The respondent - assessee is in the business of manufacturing and export of jewellery. During the course of assessment proceedings, the respondent - assessee had claimed deduction under head "miscellaneous expenses" an aggregate sum of Rs.2.94 crores. This was essentially to create brand "Nirvana". The Assessee submitted the details and nature of the expenditure and pointed out that expenses are revenue in nature, being in the nature of advertisement expenses, training fees, legal and professional fees, exhibition expenses, product supply expenditure etc. Besides, it was pointed out that an amount of Rs.1.96 crores was treated as deferred revenue expenditure and was written off over a period of three years i.e. Assessment Years 2006-07, 2007-08 and 2008-09. During the assessment proceedings specific queries were raised with regard to this expenditure and same was responded to by the respondent-assessee. The Assessing Officer in the assessment order dated 24.12.2008 held that an amount of Rs.17.98 lakhs out of the above miscellaneous expenses of Rs.2.94 crores is

of a capital nature and disallowed the same by an order passed under Section 143(3) of the Act.

5. The Commissioner of Income Tax issued a show cause notice under Section 263 of the Act to the respondent seeking to revise the assessment order dated 24.12.2008. This is on the ground that the entire miscellaneous expenditure of Rs.2.94 crores for creation of brand "Nirvana" was a capital expenditure. The respondent-assessee pointed out to above facts as transpired before the Assessing Officer. However, the Commissioner of Income Tax rejected the petitioner's submissions and held that the Assessing Officer had erred in allowing the expenditure incurred as miscellaneous expenses for creation of brand "Nirvana" as revenue expenditure.

6. In the appeal before the Tribunal, the respondent - assessee pointed out that letters dated 8.8.2008 and 24.11.2008 were issued by the Assessing Officer during the assessment proceedings seeking details in respect of the expenditure incurred for building brand Nirvana. The same was responded to by the respondent-assessee submitting the entire details. On examining the details submitted, the Assessing Officer held that an amount of Rs.17.98 lakhs out of Rs.2.94 crores alone was on account of capital expenditure. The Tribunal in the impugned order while allowing the assessee's appeal held that an inquiry with regard to the expenditure incurred on brand building exercise was carried by the Assessing Officer during assessment proceedings. On being satisfied that major portion of it was not a capital expenditure, only disallowed sum of Rs.17.98 lakhs as capital expenditure. The Tribunal while relying on the judgment of the Supreme Court in "*CIT Vs. Max India Ltd., (295 ITR 282)*" held that it is settled

principle of law that if after examining the details the Assessing Officer has taken a view, which is a possible view then it cannot be treated that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

7. The grievance of the Revenue is that the Assessment Order dated 24.12.2008 does not reflect the due consideration of the respondent's claim that an amount of Rs.2.94 crores (less Rs.17.98 lakhs which has been considered) was not to be treated as capital in nature. In view of the above it is submitted that the impugned order is unsustainable.

8. We find that the impugned order of the Tribunal does record the fact that specific queries were made during the Assessment proceedings with regard to details of expenditure claimed under the head “miscellaneous expenses” aggregating to Rs.2.94 crores. The respondent-assessee had responded to the same and on consideration of response of the respondent-assessee, the Assessing Officer held that of an amount of Rs.17.98 lakhs incurred on account of repairs and maintenance out of Rs.2.94 cores is capital expenditure. This itself would be indication of application of mind by the Assessing Officer while passing the impugned order. The fact that the assessment order itself does not contain any discussion with regard to the balance amount of expenditure of Rs.1.76 crores i.e. Rs.2.94 crores less Rs.17.98 lakhs claimed as revenue expenditure would not by itself indicate non application of mind to this issue by the Assessing Officer in view of specific queries made during the assessment proceedings and the Respondent-assessee's response to it. In fact this Court in the case of “*Idea Cellular Ltd. Vs. Deputy Commissioner of Income Tax & Ors., [(2008) 301 ITR 407 (Bom.)]*”

has held that if a query is raised during assessment proceedings and responded to by the Assessee, the mere fact that it is not dealt with in the Assessment Order would not lead to a conclusion that no mind had been applied to it.

9. Moreover, from the nature of expenditure as explained by the petitioner to the Assessing Officer during the assessment proceedings itself indicates that the view that the same were in the realm of revenue expenditure, is a possible view. Therefore, we find no fault in the impugned order having followed the binding decision of the Supreme Court in the case of ***Max India Ltd.****"(supra*), while allowing the appeal before it.

10. Accordingly, no substantial question of law arise for consideration. Thus, appeal is dismissed. No order as to costs.

(G. S. KULKARNI, J.) **(M. S. SANKLECHA , J.)**