

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "C" NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No: 5393/Del/2010
AY: - 2005-06

Dy. Commissioner of Income Tax,
Circle II (1), Room No. 312,
C.R. Building

vs. M/s. Ikea Trading (India) P Ltd.
C-16, Second Floor C-Block
Market, Paschimi Marg,
Vasant Vihar, New Delhi.
PAN AAACI1483Q

(Appellant)

(Respondent)

Department by : Shri T. Vasanthan, Sr DR
Assessee by : S/Shri Salil Kapoor,
Sumit Lal Chandani, Adv
And Ms. Ananya Kapoor, Advocate

Date of hearing : 8.3.2016
Date of pronouncement: 02.06.2016

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER

1. This appeal is filed by the revenue against the order of Ld. CIT(A) XIII New Delhi vide order dated 30th September, 2010 treating the expenditure on repair and maintenance of Rs. 1,44,25,239/- as revenue expenditure and deleting the addition made by the Ld. AO. The following grounds of appeal have been taken :-
 - i. "The order of Ld. CIT (A) is wrong, perverse, illegal and against the provisions of law, liable to be set aside.

- ii. The Ld. CIT (A) erred in treating the expenditure on repair and maintenance of Rs. 1,44,25,239/- as revenue expenditure and deleting the addition made by the Ld. AO.
- iii. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”

2. The brief facts of the case is that assessee is a company engaged in the business of trading of different products such as carpets, textile, metal, plastic items etc. The company purchases these products locally and exports them. For the assessment year 2005-06 it filed its return of income on 28th October, 2005 declaring an income of Rs. 15,88,70,103/-. During the course of assessment proceedings, it was found that the company has debited expenses of Rs. 20,988,343/- on account of repair and maintenance of building expenditure. Assessee was asked to explain nature of such huge expenditure and in response to that assessee submitted that these expenses relate to EDP maintenance charges, maintenance charges for electrical items accommodation provided to expatriate employees, cleaning charges, pool and garden expenses etc. These are the necessary expenditure on repairs of various fittings installed in its office premises. Ld. AO held that out of the above expenditure EDP maintenance cost of Rs. 22,32,507/-, upkeep maintenance of office building of Rs. 1,97,358/-, repair and maintenance of office premises of Rs. 15,76,638/-, lease rentals of Rs. 44,11,920/-, security costs of Rs. 53,87,700/- and cleaning charges of 6,19,116/- amounting in all to Rs.

14,425,239/- are in nature of capital expenditure and therefore it was held that these expenses are in nature of repairs and renovation of building which is not owned by the assessee and hence disallowed as capital expenditure. Ld. AO further allowed depreciation @ 10% on these expenses. Aggrieved by the order of the AO assessee preferred an appeal before Ld. CIT (A) who in turn deleted the disallowance holding that these are all revenue expenditure. Aggrieved by the order of Ld. CIT (A) revenue has preferred this appeal as per grounds mentioned above.

3. Ground No. 1 of the appeal is general in nature and therefore dismissed.
4. Ground No. 2 of the appeal is against the order of Ld. CIT (A) holding that expenditure on repair and maintenance of Rs. 14,425,239/- is revenue expenditure.
5. Before us, the Ld. DR submitted that Ld. CIT (A) has deleted the disallowance by admitting the new evidences. He further submitted that there is no documentary evidence submitted by the assessee about the nature of the claim of the expat employees and their work detail and why the expenditure incurred is treated as revenue expenditure. He further submitted that the terminology of the expenditure is not to be seen but the nature of expenditure is required to be seen. He further stated that even otherwise, the expenditure is not current repairs but accumulated repairs and therefore no deduction of such expenditure should have been allowed. He further submitted that before the CIT (A) only the sample

evidences of the expenditure is submitted and not all details of expenditure was provided which does not justify the deletion of the addition. He further stated that the expenditure of Rs. 15,76,638/- incurred on the premises are in the nature of the accumulated repairs, personal expenses of employees, speed money and prior period expenses. He further submitted the details of expenditure at page No. 762, 765, 771, 786-790, 836, 842 – 846, 866 and 1277 to 1280. These pages show that expenses are of the accumulated repairs, personal expenses of employees, speed money and prior period expenses. Therefore, it was submitted that these expenses should not have been allowed as revenue expenditure and the Ld. CIT (A) has deleted the disallowance after admitting the additional evidences. He relied up on the decision of honourable supreme court in CIT V Savarana Spinning mills Limited [293 ITR 201(SC)] to state that accumulated repairs is a not allowable. He further referred to the decision of Honourable Supreme court in case of Deepak Agro Foods V State Of Rajasthan (2008-TIOL-134-SC-CT] and Hon Delhi high court in case of CIT V Jan samparak Advertising Limited [56 taxmann.com 286 (Del)]

6. Against this, Ld. AR submitted that these are the expenses incurred by the assessee on premises that are not owned by the assessee but on rented premises. He submitted the complete details in the form of vouchers, bills etc, of expenditure submitted before AO and before Id CIT (A). He

submitted that genuineness of the expenditure has not been doubted by the Ld. AO but only issue is whether this expenditure are capital or revenue in nature. He further submitted that the undisputedly these are repair and maintenance expenditure and assessee has not derived any benefit of enduring nature, no capital assets is acquired and they are in the nature of routine ordinary day to day expenses on maintenance of equipments, cleaning charges, etc. and in case of rented premises even accumulated repairs expenditure are allowable as restrictions applies when the assessee owns the building and claims depreciation then only current repair expenditure and not accumulated repairs is allowable. Regarding the objection of the Ld. AR on admission of the new evidence, he submitted that there is no such ground in the appeal of the revenue. Further, he submitted that the Ld. CIT (A) has deleted this disallowance after obtaining remand report of the ld. AO. He referred to various expenditure and stated that they are neither speed money and nor personal expenditure. He also took us through the details of the expenditure pointed out by the Ld. DR. Therefore, he submitted that the Ld. CIT (A) has correctly deleted this disallowance holding that the expenditure incurred by the assessee are revenue in nature. He further took us to the para No. 2.1 of the order of the Ld. CIT(A) when the findings on these expenditure has been given by the Ld. CIT(A) holding that the expenditures are incurred on rented premises they are in the nature of the

flower supply, telephone repair machine repair etc. He also submitted that the many of such expenses are annual maintenance contract fees, mineral water charges etc. He in the end summarised that the expenditure are miscellaneous expenses, repair expenses of plant and machinery, security charges, cleaning charges. No new assets has been purchased by the assessee and it is functioning on rented premises. Regarding the decision of Honourable Supreme court relied up on by the Ld DR he placed reliance on decision of Bharat Gears Limited V CIT [337 ITR 368 (del)] where repairs expenditure was allowed considering the decision of honourable supreme court.

7. In the rejoinder Ld. DR submitted that it has for the first time come to the notice of the revenue that building is not owned by the assessee and Ld. CIT(A) has deleted the addition after admitting the new evidences without going into the details of such expenditure and therefore disallowance deleted by the Ld. CIT(A) is incorrect. He further submitted that it is for the higher authorities to cure the defect in the order of lower authorities and therefore relying on the decision of the Hon'ble Supreme Court in the case of M/s. Deepak Agro Foods vs. State of Rajasthan & Ors (2008)-TIOL-134-SC-CT and Hon'ble Delhi High Court in the case of CIT vs. M/s. Jansampark Advertising and Marketing (P) Ltd. (supra) requested that matter may be set aside back to the file of the AO. He further submitted that according to sub rule 3 of Rule 46A no evidence

can be taken into account unless the AO has been given reasonable opportunity to examine and rebut the same. For these propositions, he relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Manish Build Well Pvt. Ltd. [ITA no 9258/2011 dated 15.11.2011]. Against this Ld. AR submitted that matter should not be remitted back to the file of the AO and for this he submitted a note relying on the decision of M/s.Zuari Leasing & finance Company limited V ITO. 112 ITD 205 (Delhi) and several other decisions.

8. We have carefully considered the rival contentions. The brief facts of the case is that assessee has incurred following expenditure and same were held to the capital expenditure :-

Particulars	Amount (In Rs.)
EDP Maintenance cost	22,32,507
Upkeep maintenance at office building	1,97,358
Repair and maintenance – office premises	15,76,638
Lease rentals	44,11,920
Security costs	53,87,700
Cleaning costs	6,19,116
Total	1,44,25,239

9. It is evident from the assessment order itself that the expenditure has been incurred by the assessee on renovation and repair of building, which is not owned, by the assessee. This fact has been recorded on the last page of the assessment order wherein this fact has been recorded by the AO

that the building is not owned by the assessee. Therefore, the argument of the Id DR that it has come to the notice of revenue now is not correct. The nature of expenditure which is being disallowed by the AO holding that that they are capital expenditure are in the nature of

- a) EDP maintenance cost pertaining to purchase of printer cartridge printer fuser and repairing expenditure of various computer equipments.
- b) Lease rent of Rs. 44,11,920/- was paid to M/s. AB Hotels Ltd. as per maintenance agreement entered into with that company. According to that agreement, the assessee is entitled to use air conditioners, lifts and other building facilities, which are maintained by M/s. AB Hotels Ltd.
- c) The security charges are paid to an outside security agency for security of office premises and residential premises of the employees of the assessee company.
- d) Repairs and maintenance of office premises includes expenditure such as plumbing charges, photocopy charges and binding charges etc.
- e) Cleaning charges have been paid for its office premises to an outsider monthly basis.

Ld. CIT(A) has deleted this disallowance after obtaining remand report from the Ld. AO . In the remand report the Ld. AO has reiterated the

argument on which disallowance is made. On examination of the evidence submitted by the Assessee and on the basis of remand report submitted by the Id. AO , Ld. CIT(A) has deleted the disallowance in para 2.1 of his order as under :-

“ 2.1 Finding on Ground of Appeal No. 2 :-

I have carefully gone through the submissions filed by the appellant as also the break up of the payments under the head – EDP maintenance cost: lease rentals: security cost: repair and maintenance of office premises, cleaning charges and upkeep maintenance and office building. Further the bills/vouchers filed by the appellant vide paper book on several occasions and the balance vouchers filed vide letter dated 27.9.10 have also been cross verified by me with reference to the break up of the above expenses. It is clear from the break up and upon verification of vouchers that EDP maintenance cost amounting to Rs. 22,32,507/- has been on account of expenditure towards payment of annual maintenance contract for various EDP peripherals, purchase of printer toner cartridge, ink printer fuser and repairs of various EDP peripherals. Likewise the lease rental amounting to Rs. 44,11,920/- has been paid to M/s AB Hotels Ltd. with which tile appellant has entered in maintenance agreement for its registered office at Radisson Commercial Plaza New Delhi. As per the said agreement a maintenance charge totalling to Rs. 44.11.920/- (Rs. 3,67,660/- per month @ 12 Months) has been paid to M/s AB Hotels Ltd. for the latter having provided the appellant the use of facilities like air conditioning plant. generators, compressors, electric installation, lifts, fire-fitting equipment etc. which has been operated and maintained. by M/s A.B. Hotels Ltd. An amount of Rs. 53,87.700/- has been incurred as expenditure to security charges to professional been made to professional security agencies like Group-4 Expat; Black Fox Security Expat etc. These security agencies were deployed by the appellant at the office premises and accommodation of various expatriate employees working for the appellant. An amount of Rs. 15,76,638 has been paid by the appellant towards various repairs for the maintenance of office premises such as plumbing work, expenses for photocopying, paper towel. machine repair, indoor foliage, flower supply, washing towels, cell phone repair etc. The cleaning charges amounting to

Rs. 6,19,1161- have been paid as house keeping expenses for its office premises on a monthly basis. In support thereof the appellant had provided bills for such expenses. Lastly an amount of Rs. 1,97,358/- has been paid towards annual maintenance contract of office Air-conditioners: AMC for Hello mineral water: door access and IBM server office.

In view of the details of expenditure provided by the appellant and verification thereof through the bills/ vouchers submitted in form of paper book it is observed that all these expense are allowable as revenue expenses u/s 37(1) of the IT Act as these has been incurred for purposes of business. In fact from the order or the AO it is observed that even he has not questioned the business purpose or genuineness of these expenses and has rather disallowed these expenses holding it as capital in nature under Explanation-1 to section 32(1) of the Act and has allowed depreciation on the same. As has already been discussed in detail above none of these expenses are capital in nature and therefore the question of these expenses falling within the meaning of section 32 of the IT Act itself and therefore capitalization of these expenses and allowing depreciation thereon do not arise.

In view of the above the addition on account of expenditure on repair and maintenance for Rs. 1,44,25,239/- is directed to be deleted. Accordingly 10% depreciation allowed by the AO shall also be withdrawn.”

According to us these expenditure are purely of revenue in nature and the assessee obtains no advantage of enduring nature. These are purely routine, miscellaneous expenditure, rent charges, cleaning charges and repairs on computer & other equipments and cannot be held to capital expenditure by any stretch of imagination. On perusal of the order of LD CIT (A) and details of expenditure shown to us, we are not inclined to uphold that these expenditure are of capital in nature. The contention of the revenue that Hon'ble Supreme Court has held in CIT vs. M/s. Saravana Spinning Mills Pvt. Ltd. 293 ITR 201 pleading that the most of the expenditure are not in the nature of current repair

expenditure but accumulated repairs so even though the expenditure is revenue in nature, same is not allowable. We find that the reliance on this decision by the revenue is misplaced as in that case, Hon'ble Supreme Court was concerned about the modernisation and replacement expenses on the textile mill and it was held that it was not allowable. In the present case, the issue is not of repairs on plant and machinery but related to expenditure on building, further the building is also not owned by the assessee but is a rented premises. The expenditure would be dealt with by the provision of section 30, which is as under:-

“In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed--

(a) where the premises are occupied by the assessee--

(i) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

(ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;

(b) any sums paid on account of land revenue, local rates or municipal taxes;

(c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

Explanation For the removal of doubts, it is hereby declared that the amount paid on account of the cost of repairs referred to in sub-clause (i), and the amount paid on account of current repairs referred to in sub-clause (ii), of clause (a), shall not include any expenditure in the nature of capital expenditure.”

On reading of the above section, the accumulated repairs are not allowed when the assessee owns building and therefore as a tenant cost of repairs to the premises is allowable whether they are accumulated or current.

10. Further, regarding the issue of admission of additional evidences by the CIT (A) , we are of the view that after obtaining remand report of the Id AO he has decided the issue on merit. However, on looking at the grounds of appeal of the revenue, we did not find any such ground. Revenue has not taken a ground in its appeal against the admission of addition evidence therefore the various decisions cited before us of Hon'ble Delhi High Court in the case of CIT vs. Manish Build Well Pvt. Ltd. and of Supreme Court in the case of M/s. Deepak Agro Foods vs. State of Rajasthan & Ors (2008)-TIOL-134-SC-CT(supra) do not apply to the facts of this case. Furthermore the request of revenue to set aside the appeal to the file of Id. AO also cannot be accepted as that would not serve any purpose as the Id.AO has got an opportunity to frame its case against the assessee at the assessment stage and further next time at the stage of hearing before CIT (A) where the remand report is submitted. Now we do not find that setting aside issue to the file of Id. AO will serve any purposes as on the first two occasions either the Id OA has not carried on proper examination or on examination nothing adverse against the assessee has been found. On examination of the details of expenditure, we also could not find that any of the expenditure incurred

by the assessee are capital in nature. Further, during the course of hearing before us the Ld DR has also referred the various vouchers and bills extensively and could not point out that how these expenditure are capital in nature and what kind of benefit of enduring nature is derived by the assessee. Therefore setting aside the issue back to the file of the ld. AO does not serve any purpose. In view of the above facts we do not find any infirmity in the order of the Ld. CIT(A) in holding that the expenditure incurred by the assessee are repair and other expenditure and are also allowable u/s 30a(i) and 37(1) of the Income Tax Act and They are not capital expenditure in nature. We confirm the finding of the Ld. CIT(A) and therefore ground No. 2 of the appeal is dismissed.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 2nd June, 2016

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: the 2nd June, 2016

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

By order
AR Registrar