

Recurring expenditure incurred for 'brand building' is revenue expenditure and deductible in the year of incurrence

1 July 2014

In brief

Recently, in the case of **M/s Fine Jewellery (India) Limited**, the Mumbai Bench of the Income-tax Appellate Tribunal (Tribunal) held that recurring expenditure incurred on advertising, product display, product launch, exhibition expenses, staff recruitment and other costs associated with 'brand building' accounted as a deferred revenue expenditure in the books of accounts, would be an admissible deduction under section 37(1) of the Income-tax Act, 1961 (the Act).

In detail

Facts

- The taxpayer, M/s Fine Jewellery (India) Ltd.¹, was engaged in the business of manufacturing and exporting jewellery and incurred certain recurring expenditure on 'brand building'. This predominantly consisted of expenditure on advertising, legal and professional expenses for hiring consultants, and expenses on product display, product launch, display in stores and staff recruitment.
- The taxpayer deferred this expenditure over a period of three years in its books of accounts. However, in its return of income, the entire expenditure was claimed as deductible

under section 37(1) of the Act in the year of incurrence.

- In the first year of incurrence of this expenditure [assessment year (AY) 2006-07], the Commissioner of Income-tax (CIT) passed an order under section 263² of the Act (revision order) that treated this expenditure as capital in nature. On the taxpayer's appeal, the Tribunal expressed that the tax officer's (TO) view of the expenditure under discussion as being revenue in nature was a '*prima facie* correct view', and accordingly, overturned the revision order.

- Subsequently, however, in AY 2009-10 and AY 2010-11, the TO treated 'brand building'/ promotion expenditure as capital expenditure. Upon appeal before the Commissioner of Income-tax (Appeals) [CIT(A)], the CIT(A) gave divergent views for both the AYs. Against the aforesaid orders of the CIT(A), both, the taxpayer and the Tax Department appealed before the Tribunal.

Issues before the Tribunal

- Whether the taxpayer's case can be said to be covered in its favour by the Tribunal's order for AY 2006-07?
- Whether the expenditure under discussion incurred by the taxpayer as part of 'brand building' was capital in nature and, hence, inadmissible under section 37(1) of the Act?

¹ Fine Jewellery (India) Ltd. v. ACIT [TS-371-ITAT-2014(Mum)]

² Section 263 of the Act, subject to fulfillment of certain criteria, empowers the CIT to revise orders passed by the Assessing Officer which are prejudicial to the Revenue

Tribunal's ruling

- The taxpayer's case for AY 2009-10 and AY 2010-11 was not covered by the Tribunal's earlier ruling for AY 2006-07, because, in the earlier ruling, the Tribunal had only expressed a *'prima facie'* view on the deductibility of 'brand building' expenditure.
- The recurring nature of this expenditure was not examined earlier by the Tribunal. This aspect was important in understanding the purpose and characteristics of this expenditure.
- The fact that the taxpayer had to incur yearly expenditure on 'brand building' showed that the benefit arising was transitory. Deferral of the

expenditure over a period of three years in the books of accounts did not imply an admission by the taxpayer that the expenditure is capital in nature.

- No empirical data or objective facts were brought on record by the Tax Department to prove that a brand had come into existence, and that it generated a positive enduring value for the taxpayer.

The takeaway

This ruling provides relief for taxpayers who incur expenditure on advertising and promotion for launching new brands. The case reaffirms a settled position³ that accounting of 'deferred revenue expenditure' by the taxpayer did not permit the Tax Department to treat the same as capital expenditure.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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³ CIT v. Modi Olivetti Ltd. [2004] 84 TTJ 1038 (Delhi-Tribunal); CIT v. Jai Parabolic Springs Ltd. [2008] 172 Taxmann 258 (Delhi-HC); CIT v. Godrej Tea Ltd. [2011] 43 SOT 25 (Mumbai-Tribunal)

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