

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 22/2012

+ ITA 24/2012

% Date of Decision : 17th January, 2012.

CIT Appellant
Through Mr. Anupam Tripathi, sr. standing
counsel with Ms. Anusha Singh, Adv.

versus

PANACEA BIOTECH LTD Respondent
Through Mr. Salil Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA,J: (ORAL)

CM Nos.358/2012 & 359/2012 in ITA 22/2012

There is delay of 65 days in filing of the appeal and 100 days delay
in re-filing of the appeal. Ld. counsel for the respondent-assessee states

that he has no objection if the delay are condoned. Statement is taken on record and delay in filing and re-filing of the appeal is condoned.

Applications are disposed of.

ITA 22/2012

ITA 24/2012

1. These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) relate to assessment years 2006-07 and 2007-08 and are directed against the orders of the Income Tax Appellate Tribunal dated 30.8.2010 and 17.6.2011. As the issue involved in the two appeals is similar, we are disposing of these two appeals by this common order.

2. The assessee is engaged in the business of manufacturing and trading in pharmaceuticals products. For the purpose of sale of the pharmaceuticals products, the assessee has to get the pharmaceuticals products registered in foreign countries. The registration is normally for a period of 5 years. The registration amount, however, has to be paid in lumpsum in the first year itself when the registration is granted. The Assessing Officer has held that registration expenditure of Rs.79,55,927/-

and Rs.63,64,741/- incurred in the assessment years 2006-07 and 2007-08 was revenue expenditure under Section 37(1) of the Act but the same should be deferred over the period of 5 years as the registration was valid for a period of 5 years. Since the assessee had written off only 1/5th of the expenditure in its books, 4/5th of expenditure was disallowed and only 1/5th of the expenditure was allowed during the year in question.

3. The aforesaid addition made by the Assessing Officer as deferred revenue expenditure was deleted by the CIT (Appeals). The tribunal by the impugned orders has affirmed the said deletion and not agreed with the Assessing Officer.

4. The question of deferred revenue expenditure and the judgment of the Supreme Court in the case of *Madras Industrial Investment Corporation Ltd Vs. CIT* (1997) 225 ITR 802 (SC) was examined and distinguished in *CIT Vs. Industrial Finance Corporation of India* (2009) 185 Taxman 296 (Delhi) and it was held:-

“22. The learned Counsel for the Revenue had strongly argued that matching concept is to be applied, as per which part of the expenditure had to be deferred and claimed in the subsequent years and, therefore, approach of the AO was correct. However, this

argument overlooks that even in Madras Industrial Investment Corporation (supra), on which the reliance was placed by Ms. Bansal, the general principle stated was that ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business can be allowed in the year in which it is incurred. Some exceptional cases can justify spreading the expenditure and claiming it over a period of ensuing years. It is important to note that in that judgment, it was the assessee who wanted spreading the expenditure over a period of time as was justifying such spread. It was a case of issuing debentures at discount; whereas the assessee had actually incurred the liability to pay the discount in the year of issue of debentures itself. The Court found that the assessee could still be allowed to spread the said expenditure over the entire period of five years, at the end of which the debentures were to be redeemed. By raising the money collected under the said debentures, the assessee could utilize the said amount and secure the benefit over number of years.”

5. In *CIT v. Citi Financial Consumer Fin. Ltd.* (2011) 335 ITR 29 (Del), a Division Bench referred to *Industrial Finance Corp. of India* (supra) and then quote a passage from the decision of the Supreme Court in *CIT vs. Empire Jute Co. Ltd. Vs. CIT* (1980) 124 ITR 1 (SC):-

“13. At this stage, it would be of advantage to discuss the judgment of Supreme Court in *Empire Jute* [1980] 124 ITR 1 (SC) which repelled the theory of expenditure of enduring nature, in a great measure. In

that case, the Supreme Court noted that by decided cases, the courts evolved various tests for distinguishing between the capital and revenue expenditure but no test is paramount or conclusive. Every case has to be decided on its facts keeping in mind the broad picture of whole operation in respect of which the expenditure has been incurred. At the same time, a few tests formulated by the courts were taken note of. One such test which was specifically spelled out and may be relevant for our purpose was "when an expenditure is made not only once and for all, but with a view to bringing into existence of an advantage for which enduring benefit of a trade, the expenditure can be treated as capital in nature and not attributable to revenue". However, cautioned the court, it would be misleading to suppose that in all cases securing a benefit for business expenditure would be capital expenditure. The court added the caution in the following words (page 10) :

". . . There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the

expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

6. It was held that the claim of the Revenue that the revenue expense should be deferred in the absence of a statutory provision or spread over some years cannot be accepted. In the case of ***Commissioner of Income Tax Vs. Casio India Ltd.*** (2011) 335 ITR 196 (Del.), reference was made to the decision in the case of ***Citi Financial Consumer Fin. Ltd.*** (supra). It was held that the expenditure incurred on investment and sale promotion was business expenditure under Section 37(1) of the Act and the concept of deferred revenue expenditure should not be accepted at the behest of the Revenue.

7. We may notice in the present case that the assessee has been regularly incurring expenditure on registration of pharmaceuticals products in foreign countries. A similar addition was made in the assessment year 2003-04 and 2004-05 and the additions were deleted by CIT(Appeals). No further appeal was preferred by the Revenue to the

tribunal. In the assessment year 2005-06 after deletion of the said addition by CIT(Appeals), Revenue did file an appeal before the tribunal but the appeal was dismissed and no further appeal was preferred before this Court. It therefore, appears that the aforesaid expenditures are being claimed from year to year. Even if the plea of the revenue is accepted, the net effect may be marginal or minimum.

8. In view of the aforesaid reasons, we do not find any merit in the present appeals. The same are dismissed. No costs.

SANJIV KHANNA,J

R.V.EASWAR, J

JANUARY 17, 2012
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