

2

\$~
*
20.
+

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 224/2016

PR CIT CENTRAL-3

..... Appellant

Through: Mr Ashok K. Manchanda, Senior
Standing counsel with Ms Vibhooti Malhotra,
Junior Standing counsel and Mr Aamir Aziz,
Advocate.

versus

M/S SEAGRAM DISTILLERIES PVT.LTD

..... Respondent

Through: Mr Deepak Chopra and Mr Amit
Shrivastava, Advocates.

AND

21.
+

ITA 225/2016

PR. CIT CENTRAL-3

..... Appellant

Through: Mr Ashok K. Manchanda, Senior
Standing counsel with Ms Vibhooti Malhotra,
Junior Standing counsel and Mr Aamir Aziz,
Advocate.

versus

M/S SEAGRAM DISTILLERIES PVT.LTD

..... Respondent

Through: Mr Deepak Chopra and Mr Amit
Shrivastava, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

%

06.04.2016

CM No.11991/2016 in ITA 224/2016

CM No.11993/2016 in ITA 225/2016

1. For the reasons stated in the applications, the delay in filing the appeals is condoned.
2. The applications are disposed of.

ITA 224/2016

ITA 225/2016

3. These two appeals by the Revenue are directed against the common order dated 10th July, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 5178/Del/2010 and 1846/Del/2012 for the Assessment Years ('AYs') 2006-07 and 2008-09.
4. The two broad issues urged by the Revenue are:
 - (i) Whether the ITAT erred in accepting the case of the Assessee that making a provision for breakage in transit amounts to provisioning for contingent liability?
 - (ii) Whether the ITAT was justified in holding that the expenditure incurred on brand creation as part of the revenue expenses did not result in creation of long term benefit and, therefore, was not in the nature of capital expenditure.
5. As far as the first issue is concerned it is not in dispute that it stands covered in favour of the Revenue by the decision of this Court dated 6th October, 2015 in *Seagram Distilleries Pvt. Ltd. v. CIT (2015) 378 ITR 581*

(Del). Consequently, the appeals are admitted as far as this question is concerned and the question is answered in the negative i.e. in favour of the Revenue and against the Assessee. The impugned order of the ITAT to that extent is set aside.

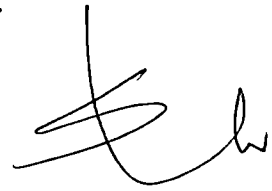
6. As far as the second question is concerned, it is seen from the impugned order of the ITAT that the Assessee was in appeal against the order of the Commissioner of Income Tax (Appeals) restricting the brand expenses to only 1/5th for the relevant AYs. The Assessing Officer ('AO') held that the brand expenses were incurred for enhancing the image of the brand and thus created an asset of enduring value. Accordingly the expenditure was treated as capital in nature and disallowed.

7. The ITAT accepted the plea of the Assessee that the said expenditure incurred in brand enhancement had not resulted in creating an asset of enduring nature. It was, therefore, held that it was not a capital expenditure. The ITAT relied on the decision of this Court in *CIT v. Monto Motors (2012)206 taxman 43 (Del)* which, as informed by the learned counsel for the Assessee, has been affirmed by the Supreme Court by the dismissal of the Special Leave Petition against the said judgment.

8. The Court is of the view that the spread of the brand expenses over a period of five years was actually in the nature of deferred revenue expenditure and the question of treating it as capital expenditure did not arise. Consequently, the Court is not inclined to frame a question on this issue.

3

9. The appeals are disposed of in the above terms.



S.MURALIDHAR, J



VIBHU BAKHRU, J

APRIL 06, 2016
MK