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

\+ ITA 22/2015

\+ ITA 105/2021

\+ ITA 111/2021

\+ ITA 543/2023

\+ ITA 544/2023

\+ ITA 545/2023

\+ ITA 548/2023

\+ ITA 549/2023

\+ ITA 550/2023

\+ ITA 637/2023

HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aditya Vohra and Mr. Tanmay Dhakras, Advs.

versus

DEPUTY COMMISSIONER OF INCOME-TAX .....Respondent

Through: Mr. Gaurav Gupta, SSC, Mr. Shivendra Singh and Mr. Yojit Praeek, JSCs and Mr. Surya Jindal, Adv.
Mr. Shlok Chandra, SSC, Ms. Naincy Jain and Ms. Madhavi Shukla, JSCs and Mr. Udit Dad, Adv.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

% **28.04.2026**

CM APPL. 24610/2026 in ITA 22/2015
CM APPL. 24609/2026 in ITA 105/2021
CM APPL. 24608/2026 in ITA 111/2021
CM APPL. 24504/2026 in ITA 543/2023
CM APPL. 24607/2026 in ITA 544/2023
CM APPL. 24505/2026 in ITA 545/2023
CM APPL. 24508/2026 in ITA 548/2023
CM APPL. 24506/2026 in ITA 549/2023
CM APPL. 24612/2026 in ITA 550/2023
CM APPL. 24509/2026 in ITA 637/2023

1. Amongst other questions, following question is involved in all the captioned appeals:-

> *(a) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that expenditure incurred on account of non-compete fee paid to sellers of bottling business was not allowable revenue deduction; instead in treating the same as in the nature of capital expenditure?*

2. The appeals i.e. ITA Nos. 22/2015, 105/2021, 111/2021, 543/2023, 544/2023, 548/2023, 550/2023 and 637/2023 involve the following question of law; additionally:-

> *(b) Whether the facts and in the circumstances of the case, the Tribunal erred in law in not allowing depreciation on the non-compete fee expenditure, held to be in the nature of capital expenditure?*

3. While appeals i.e. ITA Nos. 22/2015, 543/2023, 544/2023 and 548/2023 involve the following question of law apart from the question no. (a) above:-

> *(c) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that expenditure*

incurred towards ice boxes and dealer sign boards provided to hawkers/ dealers, carrying the brand name of the appellant, was capital in nature?

4. Mr. Ajay Vohra, learned Senior Counsel for the appellant submitted that so far as questions (a) and (b) mentioned above in para No.1 and 2 were earlier decided in favour of the Income Tax Department by this Court in **Sharp Business System v. Commissioner of Income Tax-III** reported [2012] 27 taxmann.com 50 (Delhi) vide order dated 05.11.2012, which has however been reversed by Hon'ble the Supreme Court in a rather recent order passed in the case of same assessee (**Sharp Business System)** itself, reported in [2026] 484 ITR 509 (SC) decided on 19.12.2025. Learned counsel further submitted that all the appeals on questions (a) and (b) deserve to be allowed.

5. Mr. Vohra, learned Senior Counsel further submitted that in the judgment aforesaid, Hon'ble the Supreme Court has held non-compete fee is an allowable revenue expenditure.

6. He further submitted that in another judgment titled **Taparia Tools Ltd. v JCIT** reported in [2015] 372 ITR 605 (SC), Hon'ble the Supreme Court has held that even in the case of revenue expenditure, the assessee can spread over the expenditure in more than one year.

7. Learned Senior Counsel invited the Court's attention towards para nos. 17 to 21 of the judgment in the case of **Taparia Tools** (supra), and submitted that while treating the expenditure incurred as non-compete fee, the appellant-assessee instead of claiming the entire expenditure in the year it was incurred, had spread it over the tenure of the agreement i.e., five years and therefore, such benefit be also granted to the appellant in terms of the judgment passed by Hon'ble the Supreme Court in **Taparia Tools**

(supra).

8. Adverting to the other issue relating to ice boxes provided to hawkers/retailers/small shop owners and dealer sign boards, learned senior counsel submitted that looking to the nature of the appellant's business (providing chilled cold drinks to the ultimate consumer) ice boxes were a necessary facility to be provided to the retailers so that the consumer/customers can get cold drinks ready to drink at the point of sale.

9. He further pointed out that all the ice boxes have name of the assessee's company with its logo printed and the same not only facilitates the sale of appellant's product but also publicise or advertise its products and creates a craving in the minds of the customer about products being offered for sale.

10. He asserted that the ice boxes so given to the shop keepers or vendors are handed over in perpetuity and have never been taken back by the assessee-company.

11. He therefore argued that the Tribunal has erred in treating the amount spent on the ice boxes given to the shop keepers as capital expenditure.

12. Almost similar assertions in relation to the dealer sign boards were made by the learned Senior Counsel that the appellant-company has provided to its dealers sign boards bearing the name and logo of the assessee-company alongwith the name of the dealers. He argued that the amount spent on such sign board was one time expenditure and was more of an advertisement.

13. Mr. Shlok Chandra and Mr. Gaurav Gupta, learned Senior Standing Counsels for the respondent did not dispute the legal position so far as the judgment of Hon'ble the Supreme Court in **Sharp Business System** (supra)

decided on 19.12.2025 is concerned. They however, added that the assessee cannot be allowed deferment of the revenue-expenditure.

14. Learned counsel for the respondent with regard to the ice boxes and dealer sign board provided to the hawkers, shopkeepers, panwalas, small dealers etc., argued that ice boxes and dealer sign boards have an enduring value and a long life, the amount spent on them has been rightly held to be capital expenditure.

15. Heard learned counsel for the parties.

16. So far as the first question in relation to non-compete fee paid to the sellers of bottling business is concerned, we are of the view that the judgment of Hon'ble the Supreme Court in **Sharp Business System** (supra) decided on 19.12.2025 leaves no room for doubt about the allowance of non-compete fee as revenue expenditure. Said amount has to be allowed as revenue expenditure.

17. So far as the second question in relation to deferment or splitting of the amounts by the appellant-assessee is concerned, we are of the view that since the non-compete agreement was for the period of more than one year and the appellant-assessee had claimed it as expenditure every year until the continuation of the agreement, the assessee is entitled for claiming the amount as a revenue expenditure in every year (proportionately) in light of the judgment of Hon'ble the Supreme Court in **Taparia Tools** (supra).

18. It is to be noted that the appellant has been consistently adopting the same practice and splitting the amount of non-compete fee, which has been accepted by the Income Tax Department.

19. Apart from the above, if the nature of non-compete agreement which continued for 5-10 years is considered, it will emerge that the appellant is

supposed to pay the non-compete fee to the owners of the bottling plants for the period of contract or until subsistence of such business agreement.

20. We therefore are of the view that the appellant is justified in deferring the non-compete fee paid to the owners of bottling plant (proportionately) or book the expenditure on deferred basis, until the period of the non-compete agreement continues.

21. So far as the expenditure on ice boxes is concerned, we are of the view that once the ice boxes are given to shop keepers, hawkers, panwalas, etc., the company practically loses their ownership.

22. The distribution of ice boxes is a necessary business need of the appellant-assessee, because otherwise its product would not be ready to be used. An ice box may have an enduring benefit to the shopkeeper, but so far as appellant is concerned, it is a necessary business need.

23. That apart, the ice boxes with typical colour scheme have name of the company and its logo printed on it and therefore in some way or the other, it serves as an advertisement rather than creation of an asset in the hands of the appellant-company.

24. We are therefore of the view that the amount spent on ice boxes is revenue-expenditure. The Tribunal has therefore erred in treating the amount spent on ice boxes etc as capital expenditure.

25. So far as the issue of dealer sign boards provided to the dealer is concerned, we are of the view that it should not detain us more, because the dealer sign boards have admittedly been got prepared for the dealers and they have been installed at the place of business of the dealers. Providing dealer sign board with the company's logo and dealer's name is a business requirement of the appellant and it serves the purpose of advertisement

rather than creating any enduring value for the company.

26. We therefore hold that the amount spent on dealer sign board too deserves to be allowed as revenue-expenditure.

27. All the appeals of the appellant are allowed as indicated above.

28. The Assessing Officer to pass an implicit order in accordance with law.

29. The appeals alongwith pending application(s) are disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 28, 2026/*cd*