

Ritika Private Ltd., Kolkata vs Assessee

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "C", KOLKATA

()Before , , /and
Smt. Diva Singh, Judicial Member.

C.D. Rao, Accountant Member
É / ITA No.592/Kol/2009 &
974/Kol/2009
i £/Assessment Year : 2004-05

(/¥/APPELLANT)
M/s Ritika Private Ltd. Kolkata
(PAN: AABCR 5510 N)

-Versus-. (f× /¥/RESPONDEN
The A.C.I.T., Circle
Kolkata

(/¥/APPELLANT)
The A.C.I.T., Circle-12, Kolkata

-Versus-. (f× /¥/RESPONDEN
M/s Ritika Private
Kolkata
(PAN: AABCR 5510 N)

/¥ × ' / For the Appellant: Shri S.S.Gupta
f× /¥ × ' /For the Respondent: Shri D.R.Sindhal, CI

"/ORDER

(), Ũ Per Smt.Diva Singh JM These cross appeals filed by the Assessee and the department are against the order dated 25.03.2009 of the C.I.T.(A)-XII, Kolkata pertaining to 2004-05 Assessment year.

2. Addressing the assessee's appeal it was submitted by the Id. AR that grounds no.1 and 6 raised by the assessee are general in nature as such requires no adjudication as specific grounds have been raised by the assessee qua the assessee's grievance. In respect of Ground no.2 raised by the assessee it was submitted that the issue is linked with ground no.1 of the department. Similarly ground no.5 of the assessee in its appeal is interlinked with ground no.4 of the department.

3. The Id. DR was in agreement with the above stand of the Id. AR

4. In the light of the above common stand of the parties before the Bench we reproduce grounds of appeal agitated respectively by the assessee and the department :

"1. That the Id. Assessing Officer erred in law as well as in facts in passing the order appealed against and the Id. CIT(A) erred in confirming the same.

2. That the ld. Assessing Officer erred in law as well as in facts in disallowing the Foreign Tour expenses of Rs.7,52,411/- incurred by the appellant for its employees for the purposes of its business and the ld. CIT(A) erred in confirming the said disallowance in as much as in view of the facts and circumstances of the case no such disallowance was at all called for.

3. That the ld Assessing Officer erred in law as well as in facts in disallowing the Staff Training expenses of Rs.21,75,000/- incurred by the appellant for one of its employees and the ld. CIT(A) erred in confirming the same in as much as in view of the facts and circumstances of the case no such disallowance was at all called for.

4. That the ld. Assessing Officer erred in law as well as in facts in disallowing a sum of Rs.5,47,867/- being 25% of Water & Electric Charges and the Telephone charges incurred at Kolkata Factory and the ld. CIT(A) erred in sustaining the disallowance to the extent of Rs.1,09,573/- being 5% of the said charges in as much as in view of the facts and circumstances of the case no such disallowance was at all called for.

5. That the ld. Assessing Officer erred in law as well as in facts in disallowing a sum of Rs.32,23,337/- being the expenses incurred for sponsoring the production of two films and the ld. CIT(A) erred in confirming the disallowance to the extent of Rs.24,17,503/- being 75% of such expenditure in as much as in view of the facts and circumstances of the case no such disallowance was at all called for.

6. That the appellant craves leave to adduce, alter or delete any grounds of appeal at or before the hearing of the appeal."

"1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the expenses made on foreign tour in respect of M/s. Ritu Kumar whereas the assessee could not prove whether such travel made to abroad was laid out wholly and exclusively for the purpose of business.

2. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the expenditure incurred in launching of website treating the same as revenue in nature whereas the same should be capital in nature.

3. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in treating the expenditure incurred on renovation and reconstruction of showroom is revenue in nature when the same gave enduring benefit to the assessee and went on to strengthen the brand name of 'Ritu Kumar' by adding goodwill to the establishment.

4. Whether on the facts and in the circumstances of the case Ld. CIT(A) was right to allow 25% of total production cost of two films whereas the assessee company could not prove that u/s. 37(1) of the I.T.Act, the same was incurred wholly and exclusively

for the purpose of business only."

5. The relevant facts in regard to the first issue are found discussed at page 6 para 5 of the Assessment order which was admittedly passed u/s 144 of the Act.

5.1. From a perusal of the same it is seen that the assessee claimed foreign expenses to the tune of Rs.17,40,537/- on account of the travel of the following persons namely :-

1. Amrish Prakash Kumar : Rs.7,14,426/-

2. Mrs. Ritu Kumar : Rs.9,88,126/-

3. Ms. Neelam Arora : Rs. 37,985/-

Rs.17,40,537/-

5.2. The AO required the assessee to furnish the copies of Board resolutions or any other similar document showing the approval of such tours to show that the foreign tour expenses have been incurred for the purposes of business. The assessee was also required by the AO to produce the copies of letters written to the foreign embassy showing the purposes of each of the foreign visits. Apart from that the assessee was also required to give the name, address and designation of the persons who undertook the foreign tours. Despite various opportunities no details were filed by the assessee.

The AO taking note of the fact that out of the three persons two were related parties of the assessee and for want of details he disallowed the entire expenditure claimed.

5.3. In appeal before the First Appellate Authority the issue is found discussed at pages 19 to 23 of this impugned order. A perusal of the same shows that assailing the action of the AO on merit the following arguments were advanced by the assessee :-

" b . E x t r a c t f r o m A p p e l l a n t ' s s u b m i s s i o n s d t . 1 . 1 2 . 0 8

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First & Foremost the appellant submits that the reasons for which the AO disallowed the entire expenditure were not relevant. The allowability of foreign tour expenses does not depend on Board resolution, letters written to foreign Embassies etc. The A.O.'s reference to these facts was not relevant when on facts the expenditure was necessary for business purpose. In the course of hearing the appellant had furnished names of the persons who had undertaken the foreign tours for company's business purposes. For your kind perusal and record we enclose herewith the statement of foreign travel expenses incurred during F.Y.2003-04 along with supporting bills &

voucher and evidences for incurring these expenses. In this regard the appellant submits that it is engaged in the business of design & marketing of Ladies Garments. The company produces high fashion garments designed by Smt. Ritu Kumar who is the top most fashion designer in India. In fact recognizing the yeomen services & role played by Mrs. Ritu Kumar in establishing & nurturing fashion industry in India the Govt. of India appointed Mrs. Kumar to the governing body of National Institute of Fashion Technology, established by the Department of Textiles, Govt. of India. As a result of pioneering work carried on by Smt. Ritu Kumar in the field of fashion designing the appellant was successful in establishing a niche market for its products across India. The assessee has also been able to establish demand for its high fashion products in international markets and for this purpose Mrs. Ritu Kumar and other members regularly undertook foreign tours. The appellant also made export of garments & earned substantial foreign exchange. On perusal of the details furnished, your honour will also note that expenses pertained to foreign tours undertaken for participating in Fashion shows organized in foreign countries where the appellant participated by displaying its products. It may not be out of place to state that foreign travel expenses were incurred by the appellant not only in A.Y. 2004-05 but also in the earlier years as well. In the immediately preceding year, i.e. A.Y. 2003-04 the appellant had incurred foreign tour expenses of Rs.17,73,357/-. In the regular assessment u/s 143(3) no disallowance was made. Similarly, in A.Y. 2002-03 no disallowance was made even though the expenditure on foreign travel was Rs.6,86,597.50. Having regard to the nature of assessee's business, foreign tours were necessary because Fashion industry in India derives new ideas & fashion designs & trends from western markets where the said industry is more organized and developed over the long periods. In order to promote sales of high fashion garments & accessories in India, it was necessary to undertake foreign tours to understand the business strategies adopted by Fashion houses of western countries. The appellant further submits that entire expenditure on foreign tour was properly incurred and was supported by proper bills & vouchers. The expenditure was incurred wholly for business purposes of the appellant. No disallowance was therefore, necessary in computing business income. The appellant also submits that disallowance of entire expenditure clearly establishes the surmise & conjecture on the part of the AO to disallow genuine business expenditure. The disallowance therefore deserves to be deleted."

5.4. The CIT(A) confronted the same to the AO and obtained a Remand Report from him. In the same the AO reiterated that the assessee has not been able to conclusively prove that the expenditure was incurred wholly and exclusively for the purposes of the business of the assessee. He also objected on the ground that since the assessee is engaged in marketing of high fashion garments which are mainly sold in India the general explanations for undertaking foreign tour cannot be accepted. He was of the view that general explanations were not sufficient as it was necessary to establish in each case as to how the foreign tour was associated with the assessee's business. Merely because the expenditure is supported by bills and vouchers and general explanation that someone attending the Fashion Shows, Conferences according to it the AO in his Remand Report it does not

conclusively prove that the expenditure was laid out wholly and exclusively for the purpose of business. He was also of the view that some element of personal expenditure can also not to be ruled out as in subsequent year also some disallowance on this ground has been made.

5.5. The CIT(A) confronted the Remand Report to the assessee.

5.6. The assessee in response made the following comments to the objections posed in the Remand Report. The same are reproduced hereunder for ready reference :-

"d. Extract from AR's submissions dt.20.03.2009 The AO has not pointed out any infirmity in the evidences which substantiated incurring of foreign tour expenses. The only argument of the AO is that assessee has not proved the expenditure was incurred wholly and exclusively for the purposes of business and personal element could not be ruled out. In this regard it is submitted that the AO has not pointed out infirmity in the explanations submitted before your honour wherein the business necessity of incurring such expenses was explained. It was explained that the assessee is one of the leading fashion house of India. Due to increasing Indian Diaspora spread through out the world there is growing interest and demand of products of Indian fashion industry. In view of the globalised economy, Indian customers are demanding clothes which are designed in line with trend prevailing in foreign countries. With increased use of technology newer fabrics materials and accessories are developed and these products are on display in fashion and trade shows which are regularly held in different parts of the world. In our earlier submissions we had explained that Mrs. Ritu Kumar, Mr. Suresh Kumar, Mr. Amrish Kumar and Mrs. Nilam Arora had undertaken foreign tour to attend fashion shows and trade fairs held in Duibai, USA, UK, France, Spain and Italy. It is material to point out that trade fairs are meeting grounds where people across the world have opportunity of exchanging business ideas which lead to new business opportunities; necessary for growth and innovation in business. It is pertinent to submit that Mrs. Ritu Kumar who is one of the principal promoter of the appellant, is fashion designer of world repute. She is invited to attend leading trade fairs and fashion shows in the world. Considering the pioneering work carried out by Mrs. Kumar in the field of fashion designing in India, the French Government conferred award of "Chevalier Dans LI,ordre Des Arts et Des Letters"(Knight of the Order of Arts & Letters). This French award being very prestigious print media in India given wide publicity of these achievements of Mrs. Kumar. For your kind perusal and record we enclose herewith the news paper reports published in various news papers which will prove that Mrs. Kumar was recognized as a leading designer from India who represented the country in the field of fashion world over. These facts substantiate that the appellant had global presence in the field of fashion and attending trade fairs, fashion shows etc. was necessary for the business of the appellant. Moreover, having regard to the fact that the company's turnover was more than Rs.35 crores the expenditure on foreign tour was neither excessive nor unreasonable . Considering these facts AO had never disallowed foreign travel expenses in any of the past assessments. As such there was

no reason for the AO to disallow the foreign tour expenses in its entirety for the first time in A.Y. 2004-05. The very fact that AO has chosen not to allow even one rupee expenditure on foreign tour clearly establishes his surmise and conjecture. The disallowance be therefore deleted."

5.7. Considering the same the CIT(A) took cognizance of the fact that Mrs. Ritu Kumar is a principal promoter and holds the designation of President and CEO of the assessee company. He takes note of the fact that she is also an employee of the company.

5.8. Mr. Amrish Kumar, he observed, is the son of Mrs. Ritu Kumar and is also an employee of the assessee company and during the relevant time apart from that foreign tour he was also sponsored by the assessee company for further studies abroad. Mrs. Neelam Arora, the CIT(A) observed was also an employee of the assessee and she was working in the company for the past 30 years.

5.9. In the above background the CIT(A) was of the view that the basic question to be answered is whether the foreign tour undertaken was "wholly and exclusively" for the purpose of business and if so what is the status and ability of the persons undertaking the foreign tour. As such whether there is any nexus between the foreign tour and business of the assessee. Considering the objections of the AO that since the assessee's products were mainly sold in India there was bound to be a personal element and the arguments on behalf of the assessee that identical foreign tour expenses were accepted in the past and also that attending fashion parades and conferences abroad are very essential for fashion design business. In the circumstances the CIT(A) was of the view that since the submissions made revolved around Mrs. Ritu Kumar's reputation as a fashion designer and the significance of her foreign tour and in the submissions the ability of Mr. Amrish Kumar and Mrs. Neelam Arora and the nature of specific services rendered by them linked with the documentary evidences is found missing. Accordingly he found force in the arguments justifying the foreign tour of Mrs. Ritu Kumar and also the claim of expenses claimed on her behalf and disallowed and upheld the disallowance made on behalf of Mr. Amrish Kumar and Mrs. Neelam Arora observing as under :-

"(iv) There is a force in the arguments justifying the foreign tour of Mrs. Ritu Kumar as her expense would definitely come in handy to grasp and interact with the experts and pick up new business developments/designs/trends which would in turn help the appellant company to adopt latest trends in the market. But the same is not the case with Mr. Amrish Kumar and Ms. Neelam Arora. It has not been established by the Id. AR as to how the foreign tours conducted by Mr. Amrish Kumar and Ms. Neelam Arora have benefited the appellant company.

Secondly, the credentials and the background of these two person which made eligible for deputing them abroad have also not been brought on record. As opined by the AO mere submitting the supporting bills or mentioning earlier years track record of incurring the foreign tour expenses do not support the argument of the appellant that the expenditure incurred was wholly and exclusively for the purpose of business.

(v) In view of the facts and circumstances, I am of the view that the appellant failed to establish the nexus of foreign tour expenses related to Mr. Amrish Kumar and Ms. Neelam Arora with that of the purpose of the business of the appellant. I, therefore direct the AO to delete the addition of Rs.9,88,126/- corresponding to foreign tour expenses of Mrs. Ritu Kumar. The other additions made in respect of Mr. Amrish Kumar and Ms. Neelam Arora are confirmed.

5.10. Aggrieved by this both the assessee and the department are in appeal before the Tribunal.

5.11. The Id. AR inviting attention to Volume-II of the assessee's Paper Book in assessee's appeal submitted that the related documents relied upon before the CIT(A) as placed at pages 165 to 244 of the paper book. Inviting attention to page 165 to the same it was submitted that the same contains the description of the foreign tour expenses. Attention was also invited to pages 166 to 168 of the paper book which contains statement of foreign tour expenses setting out the countries visited by the people and the details of the total number of days along with the period of visit including the amount paid for ticket expenses etc. Inviting attention to the same it was submitted that for instance the tour to Dubai for three days was by invitation from UAE of selected International Designers. The ticket for Mrs. Ritu Kumar was sponsored by them and Mr. Amrish Kumar and Mrs. Neelam Arora accompanied Mrs. Ritu Kumar as a Marketing Executive and Assistant respectively. It was submitted that the purpose of visit was addressed there and can be seen that it was a fashion show presentation. Similarly in regard to the other visits it was submitted that these details are set out for each and every visit. The documents running upto page 190 it was submitted are in support of the claim made by the assessee as bills and general vouchers from the assessee's books of accounts. It was submitted by the Id. AR that there is no dispute that Mr. Amrish Kumar is a Marketing Executive and Mrs. Neelam Arora has been an employee of the assessee for about 30 years and also a fashion designer. It was submitted that at the relevant point of time Mrs. Ritu Kumar was aged about 64 to 65 years as such it was not possible for her to cover all the events and compile the necessary details. Accordingly assistance was required by her in the business interests of the assessee as such she was necessarily accompanied by her marketing executive and the assistant who were required to assist and to do analysis and detailed working on various fashion shows and conferences attended in order to render effective assistance. Inviting attention to pages 191 to 244 it was submitted that Mrs. Ritu Kumar has dressed late Princess Diana, Jemima Khan and several Miss Indias as per report dated 8th to 14th February, 1998 published in Sunday (Magazine) Kolkata. Copy of the same it was submitted placed at page 210 of the paper book. It was submitted that fashion shows staged by her are attended by Bill Clinton and Hillary Clinton as such she commands tremendous respect as a designer of international repute. It was further stated that the costume designed by her was worn by Miss India Lara Dutta and others. It was also submitted that she has been bestowed the prestigious award of "Chevalier Dans, L'Ordre Des Arts et Des Letters" (Knight of the Order of Arts & Letters) bestowed by French Government in recognition of her contribution to fashion industry. As such it was argued that the necessity for undertaking foreign tours was fully established and the CIT(A) has found merit in assessee's claim qua the foreign tour expenses of Mr. Ritu Kumar.

5.12. However, it was argued that those very reasons should have prevailed on the CIT(A) to grant relief to the assessee qua the expenses of Mr. Amrish Kumar and Ms. Neelam Arora. It was also

submitted by the Id. AR that there is no dispute that Mr. Amrish Kumar and Mrs. Neelam Arora were salaried employees of the assessee as their salaries were claimed and allowed as expenditure over the years as they were regular employees even at the relevant point of time. Accordingly in the light of the above facts and circumstances reliance was placed upon the following orders of the Tribunal so as to contend that the facts and circumstances are identical and the claim of the assessee should be fully allowed. Copies of the same, it was submitted are placed in the paper book in the list of the cases.

- "1. Mahesh Chand Jain -vs-ACIT 108 TTJ(Del) 190
2. Omkar Textile Mills (P) Ltd. Vs ITO 28 SOT 12 (AHD)(URO)
3. Cascade Enterprises -vs- ACIT 10 TTJ (Del) 277
4. Dy.CIT -vs- Tribhovan Das Bhimji Zaveri 110 TTJ (Mum) 942"

5.13. Inviting attention to page 11 of the paper book of list of cases attention was also invited to the Departmental Circular which clarifies that for allowance in assessing business income Expenditure on visits to foreign countries. Relying on the same it was submitted that it was categorically made clear that once it is established that the expenditure on visit to foreign countries had been incurred it should not be approached from the point of view as to whether such visits result immediately in the earning of profits.

4. On the basis of the above facts and arguments it was submitted that the disallowance sustained by the CIT(A) pertaining to Mr.Amrish Kumar and Mrs. Neelam Arora deserves to be set aside and assessee's claim deserves to be allowed. It was submitted that since the department is in appeal against the relief granted to the assessee pertaining to the expenditure of foreign travel of Mrs.Ritu Kumar it was the submission that the arguments advanced would cover the same as it has rightly been allowed by the CIT(A).

6. The Id. DR taking into consideration the arguments advanced by the Id. AR in regard to ground no.2 of the assessee and ground no.1 of the department submitted that he would first argue the relief granted by the CIT(A) in the departmental appeal. 6.1 It was his submission that the evidences placed on record by the assessee have no merit whatsoever. It was submitted that till date the assessee has not placed either before the department nor before the AO or the CIT(A) or for that matter before the Bench the foreign tour particulars in support of the claim of the expenditure claimed by the assessee pertaining to foreign travel either of Mrs.Ritu Kumar, of Mr.Amrish Kumar or for that matter of Mrs.Neelam Arora.

6.2. Inviting attention to the assessment order it was also his submission that no relatable evidences pertaining to the details given to the Embassy etc has been specifically given by the assessee as was required by the AO. Attention was invited to page 6 of the assessment order for the same.

6.3. Further it was argued that the evidences relied upon by the assessee are very general in nature and not relatable to the year under consideration at all. Addressing the same page wise it was argued that the only published material pertaining to the year under consideration was the news coverage relating to fashion shows at Pakistan. It was his submission that no claim for expenditure of foreign travel to Karachi or Islamabad has been made by the assessee although these foreign media coverage pertain to the year under consideration. Addressing page 167 of the Paper Book in the departmental appeal it was submitted that no particulars as to who in Dubai invited Mrs. Ritu Kumar and there is no evidence by way of brochure etc. of the said event available on record. On the very same page it was elaborated it is mentioned that Mrs. Ritu Kumar attended Fashion Trade Fair in USA. Apart from mere narration there is no document of the said fair having occurred in USA by way of dates, venue evidenced by a brochure etc. the various pages namely 185-190 for receiving French award in as much as its relevance was questioned. It was his contention that very general evidences have been placed on record to show that Mrs. Ritu Kumar is a leading Fashion Designer. It was the submission that she was photographed in the media by virtue of her fame. However it is not a relevant evidence for the claim of foreign tour expenses for the year under consideration. Similarly the fact of her having been bestowed upon a prestigious award by the French Government it was his contention that it was not in the year for consideration. Moreover, how the same led to the foreign tour expenses which can be held to be wholly and exclusively for the business purposes of the assessee has not been set out by the assessee. It was his argument that very general facts and evidences not relevant to the year under consideration have been taken into consideration by the CIT(A) in granting relief to the assessee. Inviting attention to page 165 it was his submission that it merely narrates the foreign tour expenses claimed by the assessee for the three people as such no evidence on the basis of which the assessee's business needs can be said to be established. Inviting attention to pages 166 to 168 it was his submission that the assertion that Mrs. Ritu Kumar was invited for attending exhibition and fashion show presentation from 27.6.2003 to 30.6.2003 is not supported by any evidences as no invitation has been placed in the paper book by the assessee. Similarly in regard to claim of visit to USA, UK and France from 22.8.2003 to 10.9.2003 supposedly to attend Fashion show Trade Fair "MAGIC" in Las Vegas USA is not supported by any documents invitation or brochures etc. and the visit to UK for meeting the designers in UK is also not supported by any internal correspondence with any designers of UK on any specific dates. Similarly the assertion that on some specific date falling within 22nd August to 10th September, 2003 Mrs. Ritu Kumar attended Fashion Trade Fair "Pret-a-Porter" in Paris is not supported by any evidence or documents in the paper book filed by the assessee. The same is the position it was submitted pertained to all the other so called details of travel as such it was his strong contention that the evidence taken into consideration for the relief by the CIT(A) were not relevant evidences and relevant evidences for the year under consideration in support of the claim of the assessee have not been placed by the assessee on record.

6.4. In the light of these facts and arguments it was his contention in support of the departmental ground that the impugned order deserved to be set aside and the assessment order upheld to the extent relief granted to the assessee by way of allowing the claim of expenses on behalf of Mrs. Ritu Kumar. It was further argued by him that since the assessee has not been able to establish the claim of expenses of Mrs. Ritu Kumar the occasion to allow the claim for foreign travel expenses of her son Mr. Amrish Kumar and another employee Ms. Neelam Arora cannot be allowed and has rightly been

disallowed by the CIT(A). It was also his contention that the case laws relied upon by the assessee are not of any help. In fact the judgements of the Kerala High Court namely 261 ITR 388 and 261 ITR 390 fully support the departmental stand.

7. In reply it was submitted by the Id. AR that no doubt some of the evidences which have been placed on record are in order to highlight the International and National reputation by Mrs. Ritu Kumar as a fashion designer and in the background it has been sought to be established that it was necessarily required to stay up to date with the latest developments in the garments and fashion industry to maintain her stature. Accordingly it has been brought on record that she has received awards in recognitions of her contribution. However, relevant information is also available as the number of days spent in different countries to attend different and specific functions have all been detailed.. As such contention on behalf of the assessee is that qua the relief granted to Mrs.Ritu Kumar the same has been rightly granted as such the departmental appeal deserves to be dismissed. However the claim which has been rejected pertaining to Mr.Amrish Kumar and Ms. Neelam Arora the contention is that it has to be allowed as they had rendered service. It was also his submission that the departmental has unnecessarily emphasized that there is necessity of Board resolution. It was his contention that there was no such legal requirement to establish especially in the background where such an expenditure was regular and necessary expenditure of this nature over the years in the case of the assessee. The various case laws relied upon by the assessee establish before the CIT(A) and the Bench fully support the assessee's claim.

7.1. It was also his submission that the letters to the embassy of the different countries no doubt would establish the purposes of the visit. However that necessary documentary evidence is not available presently with the assessee as it was necessarily maintained by the traveling agent for ticketing purpose. As such purpose of the visit as spelt out in pages 166 to 169 of the paper book is specifically addressed therein. 7.2. It was also his submission that the reliance placed upon by the Id. DR on the two judgements of the Hon'ble Kerala High Court namely CIT -vs- Ram Bahadur Thakur Ltd. 261 ITR 388 and Ram Bahadur Thakru Ltd. -vs- CIT 261 ITR 390 are of no help. As on facts they are materially distinguishable. Addressing the same it was submitted that their Lordships were required to examine therein the claim pertaining to the foreign tours of wives of the Directors. Admittedly the wives were not the employees of the assessee. In the facts of the present case the three people are employees of the assessee as such the ratio of the said decision is not applicable.

8. The Id. DR in reply to the departmental appeal reiterated that the ratio of the Hon'ble Kerala High Court is applicable and in the facts of the case the evidences relied upon by the assessee are not the relevant evidence and the claim has wrongly been allowed by the CIT(A).

9. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same, we are of the view that there can be no two opinions over the fact that Mrs.Ritu Kumar over the years has enjoyed tremendous reputation at the national as well international level in the field of fashion designing. As a result of her active contribution Indian fashion industry has a global recognition and presence. The various photographs and media coverage placed on record firmly establishes this fact.

9.1. On the face of the record it is also seen that Shri Amrish Kumar, her son is a marketing executive of the assessee. As such he has been drawing salary and remuneration from the assessee initially as an Executive and thereafter as a Marketing Executive which has been allowed by the tax authorities. As such in regard to his employment there is no doubt either available on record nor had the AO or the CIT(A) made any observations/questioning the same. Further the Id. DR in the course of the arguments has also not canvassed to the contrary as far as the claim of employment is concerned. Similarly it is also seen that Ms. Neelam Arora has also been an employee of the assessee for over thirty years. In the course of the arguments it has been stated that she too is a fashion designer. Be that as it may the fact that she has been regularly drawing salary from the assessee over the years in regard to which the assessee's claim of expenditure on this count has all along been allowed by the tax authorities over the years is a matter of record.

9.2. We have also taken into consideration the arguments advanced on behalf of the assessee that attending international fashion parades, Trade fairs and conferences, etc are a business necessity of the assessee. Accordingly it was the business need to have participation, interaction at these forums in order to stay abreast with the latest fashion trends etc. cannot be faulted with and has merit. Simply being a renowned business leader by itself is not enough and efforts constantly to maintain and sustain the position by remaining current and abreast of latest technology, trends, opinions and tastes is a compulsory necessity of the current highly competitive times. 9.3. In order to fulfill the said needs at fairs, fashion parades etc, were attended by Mrs.Ritu Kumar on whose caliber and importance to the assessee there can be no two opinions. The necessity and importance for the assessee to keep its fashion designer Mrs.Ritu Kumar fully informed, aware and abreast of the latest fashion trends and fabrics etc. goes without saying. Simply because a particular lead player in an industry is fully established cannot be used as an argument that such an established player can afford to ignore the outside competition and not stay informed and alert to the new trends opinions and needs of the clientele. As such we find ourselves fully in conformity with the arguments advanced in this regard on behalf of the assessee. The various case laws in support of the business needs of an assessee to justifying the foreign tour expenses have been taken into consideration. The judgements of the Hon'ble Kerala High Court relied upon by the Id. DR have also been taken into consideration before arriving at the above conclusion. The ratio laid down by their Lordships of the Kerala High Court in the case of CIT -vs- Rambahadur Thakur Ltd. In fact supports the assessee as their Lordships remanded the issue back for examining how the business needs were fulfilled by the presence of wives of the directors during the foreign tours. As such we see that the Courts being alive to the situation have not outrightly shut the doors for non-employees namely wives of directors who necessarily by their position of proximity were conversant with health related needs of the directors and make their efficiency during travel more effective. In facts of the present case both the accompanying persons were employees and by virtue of the proximity of relationship namely son he was in a better position to assist his mother and the other was an old trusted employee of 30 years services. We have discussed the two judgements in the earlier part of this order. Accordingly in the light of the aforementioned discussion we are of the considered view that in principle the business necessity of the assessee stands established to have its presence, participation, assessment of the trends, technology in the international forum of fashion parades, trade fairs etc. However whether on facts the expenditure stands established or not needs to be addressed.

9.4. Before addressing the facts in the background of the principle that there is business need we at this point would consider it appropriate to address the principle which should guide us while considering the business needs of the assessee in claiming the foreign tour expenses of Mr. Amarish Kumar, Marketing Executive and Ms. Neelam Arora, an employee. It is not in dispute that as a fashion designer Mrs. Ritu Kumar is necessarily engaged in work which can at best be described as creative. The fashion parade fairs etc. attended by her not only cater and inform her of current trends and opinions in the market but the exercise also necessarily require the needs of analyzing the trends in fashion and garments, collecting and purchasing samples and designs as part of design development as has been claimed in the lower portion of page 166 of Assessee's Paper Book (corresponding with page 167 of the Paper Book filed by the assessee in the departmental appeal). In the light of the above basic facts in principle it cannot be doubted that Mrs. Ritu Kumar Chief fashion designer would necessarily need the assistances of trusted employees who can understand and are in confidence of her needs and requirements to be met for charting future growth, creation or expansion of her products. In the said situation we are of the opinion that the choice of assistants who should accompany her would devolve necessarily on Mrs. Ritu Kumar. As she alone can be the best judge as to whose analysis, understanding would she be guided by and trust and who would best understand her requirements. To our minds it can only be her judgement and no one else can dictate or decide for her as to who would be the appropriate person or persons to accompany her. If the said person being an employee of the assessee happens to be her son or some other trusted employee namely Ms. Neelam Arora we are of the view that no one can stand on the wisdom of her judgement as to who should have accompanied her.

9.5. From the documents placed on record it is also seen that certain visits were for studying in depth the current marketing strategies with renowned international brands like Zara etc. were following so as to implement and introduce them in the marketing strategy of assessee's business. In the light of the above reasoning facts and position of law it is our considered view that the business necessity of the Marketing Executive Mr. Amrish Kumar and Ms. Neelam Arora as such in principle is justified by the assessee. However as in the case of Mrs. Ritu Kumar the facts qua the year under consideration need to be examined as factual support to the factum of employees foreign travel has to be specifically addressed.

9.6. On coming to the specific facts available on record for the year under consideration we find ourselves in agreement with the arguments advanced on behalf of the department by the Id. CIT(DR) Mr. Sindhal. On a careful examination of the facts available on record it is seen that necessary evidence has not been led by the assessee as filing of mere statement of foreign travel cannot be said to fulfill the legal requirements as it merely states that specified conferences took place at specific times. Mere statement unsupported by any evidence whatsoever cannot be accepted. The statement has to be corroborated by some piece of evidence. The onus placed upon the assessee to place the necessary evidence we find has not been discharged. The claim put forth cannot be said to be substantiated by mere filing of statement. The statement has to be supported by evidence. It is seen that certain visits have been described for visiting events which were scheduled at a specific point of time or not is not supported by any brochure, letter or particulars given to the foreign embassy etc. which can be one of the necessary evidence. There is no material before the Bench or for that matter before the AO or the CIT(A) to show that a specific fashion parade, trade

fair took place at a specific time. Not disbelieving the assertion made it is our humble view that mere statement when deciding the issue cannot be accepted in law. It is also seen that it has been described that the countries were visited in order to have meeting with various designers on specific days no facts are available on record as to who were those designers what is the evidence of any meeting having been fixed at the specific point of time during which the assessee's employees are stated to have visited the specific countries are not spelt out. The business needs and importance of the exercise notwithstanding the necessary evidence of the events is found missing. Thus in principle agreeing with the arguments advanced on behalf of the assessee advanced by the Id. AR Mr.S.S.Gupta contending that there was business necessity for incurring such expenditure we find that on facts we find merit in the arguments of the Id. DR Mr.D.R.Sindhal in as much as necessary evidence in support of the claim made is not available on record. As has been observed earlier the Id. DR made an impassioned effort addressing each and every evidence available on record to show that relevant evidences qua the claim are not available and evidence which has no relevance has been accepted by the CIT(A) namely print media coverage of Mrs. Ritu Kumar's stature and in general fashion shows at Pakistan for which no claim is made and presence abroad during the period which is not the year under consideration. In the afore mentioned facts and circumstances in principle deciding the issue in favour of the assessee namely that the expenses for the presence at international Fashion parade fairs and studying marketing trends of renowned designer the employees expenditure by virtue of relationship etc. cannot be barred and if it is supported by evidences in the case of Mrs. Ritu Kumar, Mrs.Amrish Kumar and Ms.Neelam Arora has to be allowed. We restore the issue for want of facts and evidences back to the file of the AO with the direction to decide the same in accordance with law by way of a speaking order after giving the assessee a reasonable opportunity of being heard. The AO shall allow the assessee to place on record relevant evidences which the assessee may care to lead in support of the claim which have not been placed on record as on date.. Any correspondence with the designers or brochure of fashion shows visited by the assessee for the year under consideration in regard to the claim put forth etc may be placed before the AO namely that a specific conference took place in a country at a point of time.

9.7. We have taken into consideration of the judgements of Hon'ble Kerala High Court relied upon by the Id. DR CIT -vs- Ram Bahadur Thakur Ltd. And Ram Bahadur Thakur Ltd. -vs- CIT dated 26th September to 31st January, 2003. On a careful perusal of the same as has been discussed earlier in this order it is that in regard to the claim of the assessee pertaining to the foreign tour of the wives of the directors the issue was remanded back in order to afford the assessee an opportunity to prove that it was not a personal expenditure of the assessee. As such their Lordships even in regard to the wives of the Directors held that the assessee could prove the same to be a business expenditure and not a personal expenditure. In the facts of the present case the expenses claimed pertain to employees of the assessee and not of the spouses in fact the ratio of the two judgements would be in favour of the assessee provided the assessee is able to lead necessary evidences and facts in support of the claim.

10. Accordingly ground No.2 of the assessee and ground no.1 of the department are allowed for statistical purposes.

11. The facts pertaining to ground no.3 of the assessee are found discussed at page 11 of the assessment order. A perusal of the same shows that the assessee was required to furnish complete details of the amounts of Rs.21,75,000/- debited to the P& L Account on account of Staff Training Expenses. The assessee was required to give particulars of the nature of training imparted. In reply the assessee submitted that the expenses were incurred on account of advance training of Shir Amrish Kumar. The assessee was put to notice by the AO as to why the said amount should not be disallowed since the purpose of training, nature of the course, relevant Board resolution, bond signed by the employee had not been furnished. Since no reply was given on behalf of the assessee the AO in the 144 proceedings taking note that the assessee has failed to discharge the onus to substantiate its claim and further taking note of the fact that the said person was a related party of the assessee disallowed the claim.

11.1. In appeal before the First Appellate Authority taking note of the facts and submissions obtained Remand Report from the AO confronted the same to the assessee upheld the action of the AO. Against this the said appeal is in appeal before the Tribunal.

11.2. The relevant facts are found discussed at pages 33 to 40 of the impugned order at para 6.9. of the impugned order.

11.3. Considering the same the CIT(A) upheld the action of the AO. Against this the assessee is in appeal before the Tribunal.

11.4. A perusal of the impugned order shows that the relevant facts are found discussed at pages 33 to 40 in the impugned order at para 6.9 11.5. It is seen that as per page 34 the following arguments were advanced on behalf of the assessee in support of the claim before the Id. CIT(A). The same are reproduced hereunder :-

" b . E x t r a c t f r o m a p p e l l a n t ' s s u b m i s s i o n s d t . 1 . 1 2 . 0 8

Shri Amrish Kumar is son of Mr.S.kumar,director of the assessee. After graduating in 1999 Shri Amrish Kumar joined the assessee in marketing Department drawing monthly remuneration. While working as marketing executive Shri Amrish Kumar assisted the appellant in introducing new product- line under the brand name "Label". The product-line launched under the brand name "Label" received acclaimed trade & fashion industry and evidence in support is enclosed.

The appellant company was established in mid 1970's and its growth was charted by Mr.S.Kumar who did not have formal training either in fashion technology or marketing. On strength of experience gathered over the years and because of business acumen; vision & expertise achieved by dint of hard work & efforts put in by the promoters; appellant achieved certain success. However, after the Indian economy was opened up in 1990s reputed fashion houses of Western Countries, started opening stores in India. New retail formats started operating in India which

saw widespread prevalence of Mall culture in different Indian cities. With the changes in retailing format for consumer goods it was felt necessary that the company should make changes in marketing strategies to adopt itself to the changing business practices by bringing in changes in its product line as well as the marketing strategies so that company can achieve growth both in sales volume and market reach. It was therefore, deemed prudent that an Executive of the company should be provided with formal training in the field of business administration & management so that the company could chart its future course of action on scientific basis rather than by trial & error methods. Considering the flair shown by Shri Amrish Kumar in launching new brand which showed lot of promise, the company decided to sponsor the management education programme of Shri Amrish Kumar in the Marshall School of Business, University of South California, Los Angels. The supporting evidence for expenditure incurred on education of Shri Amrish Kumar is enclosed. Before sponsoring the education expenses of Shri Amrish Kumar, appellant had obtained an Indemnity Bond where under he had agreed to serve the company for a minimum period of 5 years after completion of his higher education abroad. Shri Amrish Kumar obtained his Master's Degree in Business Administration (MBA) in the year 2005 and on his return joined the company as Marketing Executive, drawing a monthly salary. After his return he has been actively participating in all important management functions and has been actively associated with preparing new marketing strategies. After Shri Amrish Kumar joined the appellant company's management team in 2005 the company has been able to achieve increase in the sales turnover. In F.Y. 2004-05 the company's sales turnover was Rs.33.90 crores which has since gone up to Rs.43.93 crores in F.Y.2007-08. The appellant was earlier primarily marketing ethnic and traditional ladies garments. Due to changing social and cultural values there was limitation on the growth of sale of these products. Under the leadership of Shri Amrish Kumar the company is now promoting more modern and western ladies outfits. The company has also expanded its reach by opening up shops in Malls rather than having independent shops where footfall was comparatively lower. He also actively undertook renovation of existing show rooms & gave more vibrant and modern outlook to the stores & brought about changes in the manner in which the products were displayed. Shri Amrish Kumar also introduced marketing of accessories such as hand-bags, wallets, scarves, fragrances etc. which are now marketed along with garments. The efforts put in by Shri Amrish Kumar in changing image of the shops & stores and promoting sales has been widely acclaimed in media & fashion magazines. Besides, the company was traditionally selling its products only through its own shops, but Shri Amrish Kumar introduced franchise as well as Multi Board Organisation module for selling its products. Shri Amrish Kumar also introduced changes in the marketing and organizational strategies because of his formal training which he underwent in University of Southern California. The above facts will prove that formal training in management studies obtained by Shri Kumar has helped the assessee company in carrying on its business strategies; in conformity with changes brought about by the business environment. The expenditure incurred by the appellant on training of Shri Amrish Kumar was thus directly connected with

the business of the appellant and therefore, the expenditure was wholly and exclusively incurred for the purpose of business and therefore allowable. It may also be pertinent to submit that the expenditure incurred in this score was allowed by the AO in the regular assessment of A.Y. 2005-06."

11.6. Before the CIT(A) the assessee also placed reliance upon the judgement of the Hon'ble Bombay High Court in the case of Sakal Papers Pvt. Ltd. Vs CIT 114 ITR

256. 11.7. The submissions of the assessee were confronted to the AO.

11.8. Confronted with the same the AO put forth the following objections. The same are reproduced at page 34 of the impugned order and are reproduced hereunder for ready reference :

"c. Extract form Remand Report :

In A.Y.2004-05 the assessee claimed the deduction for Rs.21,75,000/- under the head Staff Training Expenses which were incurred in relation to foreign education of Mr.Amrish Prakash Kumar. The assessee has filed documents in support of expenses incurred in connection with Management Course pursued by Mr.Amarish Kumar in USA. According to assessee, Management Education Programme of Mr.Amarish Kumar was sponsored as he had given a Bond assuring to work for the assessee's business for a minimum period of 5 years. In support of the claim the assessee relied on the decision of the Bombay High Court in the case of Sakal Papers Pvt. Ltrd. Vs CIT (114 ITR 256). From records, it appeared that Mr.Amarish Kumar was working with the assessee prior to his undergoing management course. After the completion of his Management studies; Mr.Amarish Kumar has joined assessee's business. Considering the fact that Shri Amarish Kuamr is son of the promoters and therefore a person falling u/s 40A(2); the main question which needs to be decided in the appeal is whether the expenditure incurred was personal expenditure or whether the expenditure was allowable u/s 37(1). In my opinion by sponsoring the education of Mr.Amarish Kumar the company only discharged the personal obligations of the promoters though on completion of his management studies Mr.Amarish Kumar may have joined the business of the assessee for personal reasons."

11.9. When Confronted with the objections of the AO it was reiterated on behalf of the assessee that Mr.Amrish Kumar graduated in 1999 and only thereafter he was employed by the company in its marketing department for which he regularly drew salary and monthly remuneration. The same it was stated was allowed as a business expenditure to the assessee in the earlier assessment years. During the said time it was stated Shri Amrish Kumar had contributed to the assessee's business by launching a new product line in the brand name of "label". Thus being a regular employee of the company only after having signed Bond/undertaking he was sponsored by the assessee for management studies in USA. It was submitted that the stream in which Mr. Kumar took formal training was directly connected to the business needs of the assessee and after completion of his management studies in 2005 Mr.A.Kumar resumed his employment with the assessee. The

expenses of salary etc. were also allowed as revenue expenditure in the year under consideration and subsequent assessment year.

In the said background it was submitted that in the Remand Report also the AO has admitted that Shri Amrish Kumar has joined the business of the assessee after completion of his studies. As such since before being sponsored for education and after completion of his management study, Mr. Amrish Kumar was full time employee of the assessee. The genuineness of employment it was submitted is not in dispute. In this background it was submitted that the judgement of the Hon'ble Bombay High Court fully covers the issue in favour of the assessee. Reliance was also placed upon various other orders of the Tribunal including J.B. Advani & Co. Ltd. Vs. JCIT 1 SOT 830.

11.10. However, the contentions of the assessee was not accepted by the CIT(A). A perusal of the same shows that whereas in sub-para (i) of para (e) he narrates the reasons of the AO from the objections set out in Assessment order and Remand Report; in sub-para (ii) he narrates the arguments advanced on behalf of the . Considering the same in sub-para (iii) he comes to the conclusion that he did not agree with the arguments advanced on behalf of the assessee. He sets out that since it was an acknowledged fact that Mrs. Ritu Kumar who is a brand ambassador of the assessee and it is only her reputation as an expert designer which is the force behind the entire show and the other executives including the marketing executive are not assisting the assessee company in expanding the business activity and the assessee is only cashing on the good will and expertise of Mrs. Ritu Kumar. Thus the expenditure incurred for MBA study of Shri Amrish Kumar was considered to be a discharge of personal obligations of the promoters of the assessee and was not an expenditure incurred for the benefit of the assessee. The said conclusion was supported by the judgement of the Hon'ble Madras High Court in the case of M/s. M. Subramaniam and Bros. vs. CIT 250 ITR 769 and Bombay High Court in the case of CIT -vs- Hindusthan Hosiery Industries 209 ITR 383. Accordingly based on the above reasoning the claim of the assessee was rejected.

11.11. Aggrieved by this the assessee is in appeal before the Tribunal.

12. In support of the assessee's ground the ld. AR reiterated the facts and submissions advanced before the CIT(A) at great length. It was his contention that it is not the case of the department that Shri Amrish Kumar was not an employee of the assessee before he went for further education and nor was it department's stand that after completing his education he did not rejoin as an employee. In the above background it was submitted that due to the active participation of Shri Amrish Kumar the assessee's business has increased tremendously. Attention was invited to pages 264 to 292 of the paper book which are the documents made available to the department in support of assessee's claim. Specific attention was invited to the copy of the Indemnity Bond entered into by the assessee with the said employee which was adhered to by the employee. The strong requirement set out therein were referred to. For ready reference relevant portion is reproduced hereunder :

INDEMNITY BOND This Indemnity Bond made at Gurgaon on the 14th April, 2003 by Mr. Amrish Prakash Kumar, S/o. Shree Suresh Chander Kumar, R/o. F-14/ 15, Pushpanjali Farms, Bijwasan, New Delhi- 110 037 (hereinafter called the indemnifier) of the First Part in favour of Ritika Private Limited, 138, Beliaghata

Road, Kolkata- 700015 (hereinafter called the company) of the Second Part.

1. Whereas the indemnifier has requested to the company for his sponsorship for a degree of Masters of Business Administration (MBA) Course for two years in the University of Southern California, California at USA and the company has sponsored him for the expenses to be incurred on the course as well as on his living two year course on an approximate cost of USD 50000 p.a. and the indemnifier undertakes to pay cost/damages caused to the company in the course of following: -

i) that in the event of his discontinuing/termination of the education programme as sponsored by the Company, he will forthwith reimburse to the company all the costs incurred by the company along with interest @15% p.a.

ii) Further he will serve for the company for minimum five years after the completion of his education abroad, failing which he will have to reimburse to the company all the costs incurred by the company on his education as sponsored by the company along with interest @15% p.a. Sd/-

Signature of Amrish Prakash Kumar 12.1. Reliance was also placed upon the decision of the Hon'ble Bombay High Court in the case of Sakal Papers Pvt. Ltd. Vs CIT. The judgements of the Hon'ble Madras High Court and Bombay High Court relied upon by the CIT(A) it was submitted that are not relevant and applicable for deciding the issue at hand. The same were stated be materially distinguishable on facts. Elaborating the same it was submitted that in the case of M/s. M.Subramaniam & Bros considered by the Hon'ble Madras High Court in the facts before the Hon'ble High Court were that the father had sent his son a partner abroad for higher education when he was 21. The said son had been inducted to partnership when he was a minor and admittedly he had not taken any part in the business activity of the assessee prior to being sent abroad. No doubt on his return from abroad he participated in the business activity. In the facts of the present case it was the contention that Mr.Amrish Kumar was a regular employee who had actively participated in business and was about 26 years at that time. He was assessed to tax and had tremendously contributed to the development of the business of the assessee and having demonstrated marketing acumen and flair it was considered appropriate to get him educated in the business management to fulfill the business requirements of the assessee in the business interests of the assessee.

12.2. Similarly in the facts available on record in the case of the Hon'ble Bombay High Court in the case of CIT -vs- M/s. Hindusthan Hosiery Industries 209 ITR 383 it was his submission that therein the assessee firm was a family concern consisting of mother and her four sons. One of the sons had been sent to USA for higher education. Immediately after finishing his education he was taken as a partner. In the facts of the present case he reiterated that Mr. Amrish Kumar was all along a regular employee of the assessee and the department has rejected the assessee's claim merely because he was related to the promoters. The said reason it was submitted is no reason to disallow this claim ignoring the facts on record. It was argued that the facts are entirely distinguishable and in fact the earlier judgement of the Bombay High Court fully covers the case in favour of the assessee and in the

later judgements the earlier judgement namely Sakal Paper has not been discussed or considered. Addressing the facts of the present case it was his submission that a bond had been executed by Mr. Amrish Kumar copy of which is placed at page 245. It was submitted that the increase in the turn over of assessee's business from the period 1.4.1999 to 31.3.2000 upto 1.4.2007 to 31.3.2008 has been set out at page 259 of the paper book and it was also his submission that at pages 260 to 262 in Business India, Hindusthan Time etc. it is evident that the assessee's business has diversified to "Pret-a-porter" line and western wear was also included in the portfolio. The said line was conceptualized by Mrs. Ritu Kumar and her son Mr. Amrish Kumar. Similarly the perfume 'Tree of Life' was conceptualised by Shri Amrish Kumar and the assessee further diversified in the line of accessories like bags, wallets and small range of furnishings which were all conceptualised as a marketing strategy by Shri Amrish Kumar. The ground of the assessee as such it was submitted deserves to be allowed.

13. The Id. DR, on the other hand vehemently relying upon the Remand Report and the findings of the CIT(A) contended that the judgements of the Madras High Court in the case of M./s. M. Subramaniam and Bros supra and the Bombay High Court in the case of Hindusthan Hosiery Industries cited supra fully supports the action of the department. It was further submitted by him that merely because the bond has been executed the claim of the assessee could not be allowed. It was his argument that the fact available on record is that Shri Amrish Kumar was the son of the promoters of the assessee and it was their personal obligation of getting their son educated which duty cannot be discharged by the assessee. It was his arguments that in the facts of the case there is no business nexus with the expenditure. It was also his contention that the increase in the turn over cannot be attributed to Shri Amrish Kumar and there can be so many other factors responsible for the same. Similarly mere media and printing publication is of no help to the assessee.

14. In reply the Id. AR reiterated the fact that the two judgements taken into consideration by the CIT(A) are materially distinguishable on facts and merely because Shri Amrish Kumar is related to the promoter cannot be taken to be as a bar to upgrading the skills of an employee of the assessee.

15. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same, we find ourselves unable to concur with the reasoning and finding of the Ld. CIT(A). Addressing the facts it is seen that the fact that Mr. Amrish Kumar is the son of the promoter of the assessee has heavily prevailed upon the department. It is seen that the evidence that the son was a regular employee of the assessee and the fact that the assessee has been claiming the salary paid as expenditure which claim has been regularly allowed by the tax authorities. Evidence to this extent led before the CIT(A) has not been negatively commented upon either in the Remand Report or in the impugned order. Same is the position in regard to the agreement supported by agreement that Mr. Amrish Kumar continues to remain an employee of the assessee and the claim of the salary expenses of the assessee has been allowed by the Department even in the subsequent years. The said evidences on record, as such, have not been disputed by the Department. The fact that at the time of being employed by the assessee, Mr. Amrish Kumar had completed his Graduation in B.Sc. (Economics) from London and joined marketing company in 1999 is also not in dispute. The fact that Mr. Amrish Kumar after studying M.B.A. from USA joined the assessee company as Marketing Executive is also not disputed. The Ld. CIT(A) has been of the view that

being a son of the promoter, educational expenses for obtaining M.B.A. qualification was in the domain of personal obligation of a parent and was not guided by the business interests and requirements of the assessee. We find ourselves unable to concur with the said reasoning based solely on suspicion ignoring the fact that the said son demonstrated flair and acumen in marketing where newer and wider market was garnered by conceptualising and introducing new product line, accessories like bags, wallet, perfumes, western ware etc.. Perusal of the impugned order also shows that according to the Ld. CIT(A), as per page 40, Mr. Amrish Kumar, by virtue of being son of the promoter, was necessarily discharging the obligation of a dutiful son as such necessarily required to take care of the business interest of the assessee even otherwise.. The very fact that one of the sons of the promoters has not cared to join the assessee and has ventured into an entirely different area i.e. film directing itself speaks against the rationale of the CIT(A). Be that as it may, in the facts of the present case, the assessee in the submissions advanced before the Ld. CIT(A) has argued that the choice of subject for higher studies of the employee was decided on the basis of the business needs of the assessee as the promoters did not have any marketing training and education and had achieved whatever success by sheer dint of hard work. In order to emphasise the contributions and meritorious capability of the said employee it was submitted as per page 34 of the impugned order that while working as Marketing Executive, Mr. Amrish Kumar assisted the assessee in introducing new product line under the brand name "label". As per the assessee's claim, it received wide acclaim from trade and fashion industry.

15.1 On behalf of the assessee, it has also been addressed as per page 34 of the impugned page that the assessee-company established in mid 1970, was basically known in traditional and ethnic-ware and bridal costumes etc.. The promoter Mr. & Mrs. did not have any formal training either in fashion technology or in marketing and whatever success was achieved on the basis of sheer dint of hard work. It has been canvassed that however, once the Indian economy opened up in 1990's, many reputed fashion houses and western countries started opening stores in India. Accordingly, new retail firms started operating in India with wide spread prevalence of Mall culture in different Indian cities.

15.2. Thus with the changes in retailing format for consumer goods it was considered necessary that the assessee also made changes in marketing strategies so as to adapt its sales to the changed business practices by bringing in changes in its product line as well as marketing strategies. It has been explained that in the said background, it was considered necessary to provide formal training in the field of business administration and management to its employee Mr. Amrish Kumar who launched a new brand and as such had showed a lot of promise in marketing, was sponsored by the assessee to get education in business management. Before sponsoring an Indemnity Bond was signed by the said employee who was also the son of the promoters. The same has been reproduced in the earlier part of the order. Perusal of the same shows that the said employee has agreed to serve the company for a minimum period of 5 years after the completion of his education abroad and penal conditions for violating the provisions of Indemnity Bond have been set out. It has also been canvassed on behalf of the assessee that after the completion of his qualification successfully in 2005, Mr. Amrish Kumar on his return joined the company and has actively participated in discharging all important management functions.

15.3. It has also been canvassed that thereafter the assessee-company has promoted modern and western out fits and tried to create a more vibrant and modern outlook in the stores opened in the Malls where the foot-fall was comparatively higher. Apart from that the assessee has led evidence by way of media reports that Mr. Amrish Kumar has also introduced marketing of accessories such as hand bags, wallets, scarves, fragrances which admittedly were not marketed earlier and are now marketed along with garments. New ways of marketing by way of franchise have also been introduced. In the light of the above facts, supported by documents namely coverage of print media sufficiently addresses and supports the assessee. The fact remains that the promoters were not trained and educated in latest business management and marketing techniques. The business having started by them in 1970s. the global scenario and consequently Indian marketing scenarios underwent a major change by the introduction of mall culture and opening of the Indian economy. The fact that a B.Sc.(Economics) qualification of the promoters son having been regularly employed by the assessee who demonstrated a flair and acumen in devising and adopting new marketing trends and also diversifying in production aspects was sponsored for getting MBA qualification from USA which was obtained cannot be said to be a decision which was not in the business interests of the assessee. Merely because he was son of the promoter does not necessarily make it compulsory for him to join the assessee as the choice of career would depend on interests and flair of the child. As observed one of the sons of the promoter has not cared to join the assessee as an employee and has chosen to go in a different field.

15.4. Even examining this argument from another angle we are of the view that the most doubting Thomas cannot conceivably argue that there is a vast difference in approach, education skills, perspective of an employee who is B.Sc. (Economics) and an employees who is M.B.A. The fact that the son in the facts of the case has been an employee of the assessee and subsequently on the completion of his higher education has joined the assessee is not disputed. The fact that he has complied with the requirements of the bond is not in doubt, but even dehors that the son by very virtue of his relationship to the promoters of the assessee would have exhibited greater loyalty to the assessee and applying the very analogy of proximity of relationship which has prevailed tremendously upon the department infact supports the assessee's case. The material fact by which the issue has to be considered at the outset is whether the person whose skills and education has been upgraded is an employee of the assessee or not. This question has been answered in the affirmative all along. The merit of the other circumstances which support and detract come into play afterwards. 15.5. We find that in the peculiar facts and circumstances of the case, the ratio laid down by the Hon'ble Bombay High Court in the case of Sakal papers Pvt. Ltd. vs. CIT 114 ITR 256, fully covers the issue at hand.. We have also taken into consideration the judgment of the Hon'ble Bombay High Court and the Hon'ble Madras High Court namely CIT vs. Hindustan Hosiery Industries (cited supra) and M/s. M. Subramaniam & Others (cited supra) respectively and are of the opinion that the said judgments are not applicable to the peculiar facts and circumstances of the case. It is seen that in the facts of the case of Hindustan Hosiery Industries, the Hon'ble Bombay High Court has held that in the partnership firm consisting of mother and 4 sons. Sending of a partner to USA to get a Degree in business Management could not be claimed as business expenditure. In the facts of the case at hand there is a fundamental distinction namely that apart from being a son of the promotes, Mr. Amrish Kumar was admittedly an employee of the assessee. As such he had not been sent as a parental obligation and has been sent as an employee who had

demonstrated in skill and flair in marketing and who subsequently rejoined as an employee. The growth of a business is not depended entirely on doing what was all along being done but is also dependent on the vision and planning to diversify and increase its clientele by way of additions in produce line and by charting newer marketing strategies at par with its competition and other players in the market. It can not be over emphasized that mere creation and production of the product by itself does not fulfill the business interest of the assessee, the same are fulfilled only when its products are successfully marketed in the new changing scenario and meeting the competition of the current times head-on. Similarly, it is seen that in the case of M/s. M. Subramaniam, again the son who had been sent, was first made partner and then sponsored for higher education and no doubt there was a bond entered into by him. However the said son was not an employee of the assessee. As observed, this⁶. Accordingly on account of the detailed facts and circumstances and position of law as has been addressed in the earlier part of the order, we allow the ground no.3 of the assessee.

16. The facts pertaining to Ground no.4 of the assessee which are not in dispute is that from the premises 138, Beliaghata Road, Kolkata the assessee company and M/s. Kalamkari Designs Pvt. Ltd. which is also engaged in the export of garments was also functioning on rent from the premises leased from M/s. India Ice Aerated Water and Cold Storage Pvt. Ltd. In 1976. However after 1997 Kalamkari Designs Pvt. Ltd. shifted its manufacturing operations to Gurgaon. As such it did not carry the manufacturing activity in Kolkata but only maintained its Registered office at the said address. The electricity and telephone connection was taken by Kalamkari Designs Pvt. Ltd. and it allowed the assessee to use the premises for carrying it for manufacturing operations and also use the electricity and telephone connections. Thus the assessee company used the electricity and telephone in the name of M/s. Kalamkari Designs Pvt. Ltd., 138 Belighata Road, Kolkata.

16.1. In these facts the AO disallowed 25% of the expenses claimed by the assessee resulting in an addition of Rs.5,47,867/-

16.2. In appeal before the First Appellate Authority the disallowance was sustained to the extent of 5% on account of the following reasoning :

"e. Decision :

There is no dispute about the fact that some of the bills have been raised in the name of M/s. Kalamkari Design Ltd., a related company. The bifurcation of the expenses which are attributable to M/s Kalamkari Design has not been furnished by the appellant. The appellant's argument is that the entire premises belongs to M/s. Kalamkari Design Ltd. Has been used by the appellant since 1997 and that M./s. Kalamkari Design Ltd. Was not claiming this expenditure as evidenced by the confirmation letter given by M/s. Kalamkari Design Ltd. It is reported that the registered office of M/s. Kalamkari Design Ltd. Is located at the same premises at Kolkata and it is being assessed to tax at Kolkata though its manufacturing activities are located elsewhere. As such it needs some kind of 'establishment' to take care of annual activities of filing of returns with ROC, filing IT returns and representation,

usual liaison with government office etc. for this a portion of the expenses incurred could be attributable and linked to establishment activities. The contention that M/s. Kalamkari Design Ltd. Is not claiming any expenditure on this account and that the accounting treatment followed since long accepted by the department is not the criteria to decide the issue. There is no denying the point that some bills are raised in the name of M/s. Kalamkari Design Ltd. And that there exists a kind of establishment at Kolkata which needs little expenditure.

However, going by the facts of the case the disallowance made at 25% appears to be excess. I am of the view that a disallowance at 5% instead of 25% is reasonable to take care of the expenses attributable to M/s. Kalamkari Design Ltd. Accordingly I direct the AO to limit the disallowance to 5% of the total expenses incurred on electricity, water charges and telephone charges. The ground of appeal of the appellant is partly allowed."

16.3. Still aggrieved the assessee is in appeal before the Tribunal.

17. The ld. AR reiterated the submissions made before the ld. CIT(A) namely that in the immediately preceding years on the same facts no addition has been made and also in the subsequent years also on the very same facts no additions have been made. The confirmation of the fact that no expenditure in regard to the said same had been claimed by Kalamkari Designs Pvt. Ltd. in the year under consideration was also relied upon. In this background it was his submission that if any disallowance is to be maintained then only a token disallowance if at all could be made although in fact entire expenses claimed should be allowed.

18. The ld. DR on the other hand contended that if in the earlier years these facts have not been taken into consideration the AO is not barred to consider the facts as each assessment year is independent and by non action by AO in the earlier or subsequent years the assessee cannot be said to arrive at an advantage which is not supported by facts. It was also his contention that the fact that Kalamkari Designs Pvt. Ltd. continues to maintain its Registered office in Kolkata is not disputed and since some kind of establishment to take care of annual activities like filing of income tax returns, representation before the authorities and liaison with the govt. office and manufacturing unit at Gurgaon is required as such the disallowance sustained by the CIT(A) is more than reasonable and no further relief ought to be allowed to the assessee.

19. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same we are of the view that in the peculiar facts and circumstances of the case no interference is called for in the impugned order Fully agreeing and concurring with the reasoning and finding arrived at by the CIT(A) on facts which we hold to be reasonable. Ground No.4 raised by the assessee is rejected.

20. Ground No.5 raised by the assessee is interlinked with the ground no.4 of the revenue. The relevant facts are found discussed at pages 3 and 4 of the assessment order and pages 51 to 51 of the impugned order.

20.1. A perusal of the same shows that in the P&L a/c the assessee has debited the following expenses :-

(i) Road to Ladakh Rs.16,12,420/-

(ii) Little Terrorist Rs.16,10,917/-

20.2. A perusal of the record shows that despite opportunities no specific arguments justifying the expenses were made before the AO. Taking note of the fact that the expenses appear to be shooting expenses the details of which had not been furnished and since the assessee had separately debited shooting expenses in the P&L account the AO made the addition of the said amounts.

20.3. In appeal before the First Appellate Authority the submissions advanced before the CIT(A) are found discussed at pages 52 and 53. The same were confronted to the AO who filed his Remand Report setting out his objections thereto. The same is found reproduced at page 53 at para (c)) of the impugned order.

20.4. Confronted with the same the assessee filed further submissions which are culled out at pages 53 and 54 of the impugned order wherein it was canvassed that the expenditure was to be allowed as sponsoring as it resulted in publicity and recognition and fully supported by the ratio as laid down in the judgement of the Delhi High Court in the case of CIT -vs- Delhi Cloth and General Mills 144 ITR 279 and the judgement of the Rajasthan High Court in the case of CIT -vs- Lake Palace Hotels Pvt. Ltd. 239 ITR 281.

20.5. Considering the arguments put forth the CIT(A) holding that there was an advertisement value involved allowed the expenditure equivalent of 25% of the two films.

20.6. Still aggrieved the assessee is in appeal before the Tribunal for the remaining disallowance and the department aggrieved by the relief granted by the CIT(A). As such both the parties are in appeal before the Tribunal.

20.7. It is seen that in appeal before the First Appellate Authority it was contended on behalf of the assessee that the expenditure incurred was never claimed to be a social expenditure. It was stated that as has been argued in the other grounds the assessee is principally engaged in manufacturing and marketing of ladies garments. The assessee specializes in manufacturing garments which are based on ethnic and traditional design and materials. It was contended that the assessee company by using the products and designs developed by village artisans produces fabric and dresses. The products it was stated are generally influenced by design, colours and images inspired by social ethnic and rural ethos prevailing in different parts of India. Traditional forms of weaving designing and cloth making are used in cloth making and these products have gained popularity world over. The Indian Diaspora it was stated is spread world over and people of Indian origin are now residing in every nook and corner of the world. It has also been contended that in the past 10-15 years the Govt. of India has also placed emphasis on promotion of tourism in India which has seen a number of foreign tourists coming to India who buy traditional Indian dresses and ladies outfits made of

finest quality of fabrics and other material but which are traditional in nature. The assessee company it was submitted has a niche market for its products amongst this segment of customers. It was submitted that the company was desirous of propagating its products to a wider audience in and outside India so as to create interest in Indian ethnic wear. The company due to fund constraints could not however undertake advertisement on a large scale in the international media.

20.8. In the above background it was stated that Shri Ashwini Kumar, son of Mr & Mrs. Kumar is a Film Director of International repute who was producing and directing 2 films viz. "The Little Terrorist" & "The Road to Ladakh" for exhibition in international Film circuits. Both these films had story line based in Indian sub continent. Characters of these films were expected to wear traditional, ethnic dresses. The appellant company it was stated therefore decided to sponsor production and marketing of these 2 films. The characters in the films were clothed in the company's products. It was stated that in both these films the assessee's contribution in making of the films was widely acknowledged and acclaimed. Besides since the company had provided the cloths for the characters in the film the assessee company's products got wide publicity in the international market. The international audience it was stated could see in the film the company's products who appreciated the traditional ethnic designs and the products of the appellant. It was stated before the CIT(A) that assisting production of these films the assessee company got wide publicity for its products because these films were seen by who-s-who of the International Cinema and got wide acclaim and appreciation from fashion analyst of international repute. It was stated that the film "Little Terrorist" was nominated for Oscars in the 'Best Live Action Short Film: category. Similar nomination was also received for European Academy Awards. This film won prizes at - 1st prize - Montreal World Film festival, Canada, Best Film - Manhattan film festival, New Tork, USA Best Film-Docufest Film Festival, Kosovo, Grand Prize - Trehran Intl. Short Film Festival, Iran, Beli Expressvu Award Reelworld Film Festival, Canada, Satyajit Ray Award - Best Short Film, Satyajit Ray Foundation U.K. Winner - Alternative Film Festival, Romania Winner - Lucania Film Festival. Italy, winner Salento Film Festival, Italy. Similarly the film Little Terrorist also won prizes in Film Festivals held at Montreal World Film Festival and Sao Paulo INT. Short Film Festival.

20.9. In the context of the above facts, the following arguments was advanced on behalf of the assessee that any person, desirous of promoting any product can use these medias namely cinema, television, electronic audio & visual media which play a very vital part in disseminating information. It was stated that it is for this reason now-a- days every film sponsored by manufacturers of different products who may not even have any direct relation with the subject of the film e.g. recent film "Dostana" it was stated is promoted and partnered by IDBI Bank MTV, NDTV 24x7, Aajtak, Mid Day, Make MY Trip & DHL. The film "EMI" was promoted by Fun Cinema, Zee News, Radio 94.3 FM. Idea Cellular, Idea Time Movies, Bright Advertising, Sahara One, Movie Q. Film "Dil Kabaddi" is co-promoted and partnered by Global Advertisers, Digital Signage Network MTV & Radio City.

20.10. Accordingly it was argued that it was an accepted business practice and strategy for the manufacturers or service providers to be associated with a film production for accessing the public, for exhibiting its products and service through films. Through exhibiting its products in a film a manufacturer or service provider can reach to a large cross section of society and potential

consumers can visualize the products on screen. The appellant it was stated followed this marketing trend and associated itself with production of 2 films, which won critical and wide acclaim across the world. As a result the company as well as its products got international publicity and won international acclaim and recognition. It was argued before the CIT(A) that therefore submitted that the expenditure incurred being in the nature of publicity expenses was to be fully allowed while computing the business income of the assessee.

20.11. As observed in the earlier part of this order that confronted with these submissions the AO filed his Remand Report which has been reproduced in the impugned order in para (c) page 53. The same is reproduced for ready reference :

"c. Extract from Remand Report "The assessee has furnished the details of expenses incurred on production of 2 films viz. 'Road to Ladakh' and 'Little Terrorist'. The details furnished indicate that the assessee had incurred expenses on production of 2 films. However, the main question which needs to be decided whether the expenditure was laid out wholly and exclusively for the business purposes of the assessee. Merely because an assessee incurs expenditure that can not be the reason enough to allow the expenditure. U/s. 37(1) the assessee is obliged to prove that the expenditure incurred by an assessee was laid out wholly and exclusively for the purposes of business. The assessee has not been able to discharge the onus of proving that the expenditure was in any manner related with assessee's business. For this reason the Assessing Officer rightly disallowed the expenditure on film production which did not have direct connection with assessee's core business activity."

20.12. Confronted with the same in reply the assessee contended that the AO has not found any infirmity in the bills or details of the expenditure incurred on sponsoring films 'Road to Ladakh' and 'Little Terrorist' It was also contended that the AO has not pointed out any factual or legal infirmity or error in support of the expenditure. The AO's contention is that the expenditure was not incurred for the purpose of assessee's business. It was reiterated that on behalf of the assessee it has been explained that the reasons and business rationale for sponsoring these 2 films which won international acclaim and awards in many prestigious competitions around the world. The film "Little Terrorist" was amongst 5 short films which were short listed for "Oscars Award" and because of this the said films gave wide publicity and recognition to the assessee being principal sponsor of the film. It was argued that it is for a businessman to decide as to what form or mode he should adopt for publicizing his business. It is for the businessman to take a business decision keeping in mind the commercial realities. The assessee is in the business of designing and marketing value added designer clothes which are purchased by persons holding to higher economic strata. Their decision to purchase such garments is influenced by the Glamour associated with the product and therefore the assessee needs publicity in the glamorous world. For this purpose the assessee sponsored production of 2 film which were to be shown in International Film Festivals. Since these 2 films won many awards in Film Festivals worldwide the assessee also got wider publicity for itself as well as for assessee's products since costumes wore by the artists in these films were specially designed by the appellant. The AO it was stated that has not disputed that there is recent trend where each film has numerous sponsors who are all reputed companies marketing different

products and services. These facts establish that in today's commercial world there is a business practice and custom to gain publicity by sponsoring films. 20.13. In the context of the above arguments it was stated that although there was no direct judicial decisions on the expenditure incurred on sponsorship of films however the Delhi High Court in the case of CIT vs Delhi Cloth and General Mill Co.Ltd.144 ITR 279, 280 & 283 and Rajasthan High Court CIT vs Lake Palace Hotels Pvt. Ltd. 293 ITR 281 have held that the expenditure incurred on sponsorship of Sports Tournaments is an allowable business expenditure because the sponsors derive publicity mileage. The judicial principle by which the expenditure on sponsorship of sports tournaments is allowable equally applies to sponsorship of films because in both the cases sponsors get advantage of advertising their name and product and thereby reaching to wider audiences. The disallowance on sponsorship of films it was argued may therefore be deleted.

20.14. Considering these submissions the CIT(A) was of the view that the AO has made disallowance holding that the assessee has not discharged the onus of proving that expenditure incurred was wholly and exclusively for the purposes of business of the assessee. The assessee on the other hand through the ld. AR has contended that by sponsoring of the production of the two films the assessee gained publicity and demand internationally for the products produced by it He has noted that the characters of these films were expected to wear traditional and ethnic dresses produced by the company which in turn got wide publicity for its products. Considering the arguments that the films produced and directed by Shri Aswini Kumar son of the director of the company being a director of the international repute and the fact that the two films produced won international awards which helped the company's reputation and its product and the argument that the media plays a very important role disseminating information the decision to sponsor these films was considered to have an element of commercial expediency to a certain extent. The said conclusion according to the CIT(A) was in tune with new market trends and aggressive marketing strategies sponsoring of the films by way of big houses. However, he was of the view that the question which arose for decision is the extent of the meaning of Sponsorship. He was of the view that normally in "sponsoring of the events" the sponsorers and the producers/conductors of the films/events are generally different and distinct. The sponsorers just sponsor the programmes/events by putting advertisements, hoardings/banners or exhibiting on cloths/wear by putting 'labels' or 'logos' of this sponsoring concern. In the present case he was of the view that the sponsorer and producer/director of the films are one and the same. Moreover, the producers/director of the films was a close relative (son of the promoter of the company). Moreover the fact that the entire production cost had been borne by the assessee was also considered to be a very unusual practice is seen in the marketing arena. The CIT(A) was of the view that generally the sponsorers as per agreed terms and conditions pay a sum depending on the reputation of the producer/conductor of the programmes/events. But the sum that is generally paid in sponsoring the event does not cover the total cost of production or conduction of an event. He also noted that sometimes there could be more than one sponsorer. As such sponsoring the entire cost of production was considered to be an abnormal feature and definitely not in tune with either 'commercial expediency' nor "wholly" and "exclusively". for the business purposes of the assessee. Taking note of the fact that Firstly the producer/director is a very close relative (son) of the promoters. Secondly the appellant company is not in the business of production of films. Assuming that the appellant company produced the two films by incurring huge expenditure on its own that it amounts to capital expenditure as the benefits that accrue from the

films as claimed would be of enduring benefit. The CIT(A) taking note of the argument advanced that the characters have worn the dresses of the assessee however questioning whether any "labels" or "logos" were displayed to help publicizing the brand the CIT(A) allowed relief to the extent of 25% of the total production of the two films 20.15. Aggrieved by this both the assessee and the department are in appeal before the Tribunal..

20.16. The arguments advanced before the CIT(A) culled out in the impugned order which have been discussed at length in detail in the earlier paragraphs were reiterated at length by the Id. AR. After inviting attention of the Bench to the objection of the AO as highlighted in the Remand Report the submissions advanced before the CIT(A) culled out in the impugned order and discussed in the earlier part of this order were also reiterated. The Id. AR further sought support from the observations of the CIT(A) wherein he has held that there was some commercial expediency in the decision of the assessee to sponsor the two films which decision was stated to be held by the CIT(A) in tune with the current trends as per the finding in the impugned order. In the above backgrounds it was his contention that the garments of the assessee got international attention and by virtue of these films which have received various international awards the expenditure incurred thereto was stated to be allowable as business expenditure thereby reliance was placed upon the assessee's paper book pages 352 to 478..

21. The Id. DR opposing the relief given by the CIT(A) and argued that the assessee's ground should be dismissed contending that the assessee has not cared to address the fact and the CIT(A) has also ignored the fact that the AO has given a categorical finding in the Assessment Order itself namely that shooting expenses have already been claimed by the assessee in its profit and loss account. Addressing the documents and in support of the claim of the assessee which are found at pages 474 to 600 in the departmental. It was his submission that they do not support that the expenditure claimed by the assessee is to be allowed even otherwise. It was his vehement stand that merely relying upon the media reports that international awards were received by these two films does not prove anything. It was also his contention that only general arguments have been advanced and the assessee has failed to establish by way of any evidence, nexus of the said expenditure to the business needs of the assessee. It was also his contention that the CIT(A) has not cared to verify the facts specifically that the AO has given a categorical finding that shooting expenses have already otherwise been debited to the profit and loss account by the assessee as how can the same expenses be considered again it was questioned. It was his stand that the said films were directed by a close relative of the promoters i.e. the son as such in the above facts in the absence of evidence addressing nexus of business needs with the said expenditure how 25% of the expenditure incurred could have been allowed by the CIT(A) is not available on record. The judgements relied upon by the Id. AR it was his contention were not relevant. Accordingly it was his argument that the assessee's ground for further relief deserves to be dismissed and the departmental ground deserves to be allowed.

22. In reply the Id. AR hastened to clarify that the shooting expenses which were debited to the profit and loss account by the assessee pertained to photo shoots made for the purpose of website and shootings of fashion parades etc. which were directly related to the assessee's business. As such since the assessment order is made u/s 144 the AO may not have taken note of this fact available on record. It was his arguments that there was no duplication of the same expenses as the shooting

expenses were entirely different and identical expenditure had been incurred over the years in routine . However in the year under consideration the assessee sponsored the two films for the purpose of advertisement and publicity first time and by this the assessee could market and publicise its products. Reliance was placed upon the judgements of the Hon'ble Rajasthan and Delhi High Court and the judgements of the Bombay High Court in the case of CIT -vs- Geoggrey Manness & Co. Ltd. 180 Taxman 87 (Bom) copy of the same is placed in the paper book. It was his contention that the expenditure claimed deserves to be fully allowed.

23. The ld. DR in reply contended that the relief granted by the CIT(A) is not justified facts.

24. We have heard the rival submissions and perused the material on record. On a careful consideration of the same it is seen that qua the issue of incurring expenditure there is no doubt.

24.1. However taking note of the arguments advanced by the ld. DR that the shooting expenses have been debited to the profit and loss account over it is seen that the doubt expressed by the ld. DR has been attempted to be allayed by the ld. AR who has politely stated that the expenses claimed for sponsoring the two films is not a duplication of the same expenditure. We observe that we have no reason to disbelieve the submissions of the ld. AR however deem it appropriate that the AO may verify the facts after giving the assessee an opportunity of being heard. Needless to say that the AO shall pass a speaking order.

24.2. Coming to the merits of the claim supported by way of documents and vouchers pertaining to the factum of incurring expenses pertaining to sponsoring the two films it is seen that apart from the above objection by the ld. DR before us neither any objection has been posed in the Remand Report nor has the CIT(A) doubted it and for that matter nor has the ld. DR doubted the fact of incurring of expenditure.

24.3. We have gone through the plethora of evidences/documents relied upon by the ld. AR on behalf of the assessee. On a careful perusal of the same we are of the view that there can be no two opinions on the fact that Shri Ashwini Kumar the son of the promoters of the assessee was a director of international repute. The factum of awards and international acclaim showered upon him by virtue of the two films has been fully established on behalf of the assessee. The ld. AR has successfully demonstrated that the two movies namely "The Little Terrorist" and "The Road to Ladakh" got international acclaim and kudos which fact cannot be disputed and is not in dispute. We have also gone through the various documents by virtue of which the assessee has sought to establish that sponsoring of these two films by established leaders in industry in the line of trade is an accepted mode by which the products gain publicity, advertisement and create market awareness of its products in the mind of potential customers. For this purposes we have taken note of the relevant pages in the Paper Book where the strategy of the leader in the automobile industry namely BMW has been discussed. We have noted that BMW which admittedly was not in the line of film production produced short films in the summers of 2001 and 2002. The films as per record were directed by popular Hollywood and international directors. In the series the actor "Clive Owen" starred as "The Driver". The document namely pages 357 to 362 show that each film's story highlighted the performance aspects of various automobiles of BMW series. It is seen that the BMW

produced free DVD of the series which was made available to BMW owners through the owner's circle on the company's website. However later the BMW sold the DVD directly through their website and telephone number. As since initially they were in limited supply and many dealerships had no idea that BMW had even made promotional films. A perusal of the relevant pages of the Paper Book shows that in order to highlight the performance aspects of BMW the following short films in Season-I were made namely

(i) Ambush, (ii) Chosen, (iii) The Follow, (iv) The Star, and (v) Powder Keg, the same were directed by the following directors namely John Frankenheimer, Ang Lee, Wong Kar-wai, Guy Ritchie and Alejandro Gonzalez Inarritu respectively having the following short story lines to highlight the product namely

(i) The Driver escorts an elderly diamond buyer (Tomas Milian) and outruns a pursuing van. (featuring BMW - series)

(ii) The Driver protects a holy Asian child, a cat-and-mouse game ensues between them and numerous henchmen. (featuring BMW - 5 series)

(iii) The Driver is hired by a paranoid film celebrity (Mickey Rourke) to spy on his wife. (featuring BMW - 3 series and Z3 Roadster)

(iv) The Driver is called by a producer to teach an obnoxious celebrity (Madonna) a lesson. (featuring BMW - 5)

(v) The Driver is drafted by the UN to rescue a wounded war photographer (Stellan Skarsgard) stranded in a Latin American conflict zone. (featuring BMW - XS) 24.4 A perusal of page 362 shows that in order to capitalise this methodology of the advertisement and marketing and creating public awareness it is seen that Nissan another leader in automobile industry, also produced their short films featuring their newly reintroduced 350Z. The said film was titled "The Run" and was directed by John Bruno (also worked on True Lies, The Abyss and Terminator 2 : Judgement Day) as per the said page. After the first season Clive Owen starred in "The Bourne Identity"

where he also drove around in a BMW. Similarly "The Transporter" starring Jason Statham was based on the BMW's "The Hire".

24.5. From the above facts placed on record it is seen that the business necessity of an assessee in the current scenario to seek publicity, advertisement and create public awareness by way of short films as has been discussed above in the case of BMW short films etc. is an accepted methodology and marketing strategy and cannot be in doubt. The short films can provide markets with a strategy and foundation for the web, direct mail, in store, special events and of course television etc. as such reach a wide range of potential customers as it is a versatile medium. We have gone through the paper book where in it is discussed that the films namely "The Road to Ladakh" and "The Little Terrorist" got international acclaim in regard to the content and quality. They were also nominated for various prestigious awards and won quite a few of them is also a matter of fact. As such being

alive to the fact that strategic film contents provides an opportunity to engage and set a brand story cannot be questioned as through these strategic films a more Indian story engaging the interests of the vast clientele which may view the prestigious and luxury brands cannot be over emphasized. However, how this specific brand of the assessee was propagated by the film "Little Terrorist" which as per the documents made available by the assessee in the paper books is the story of Jamal a 10 year old Pakistani boy who crosses the border by mistake lands up in India finds reluctant shelter by a Hindu Brahmin child and is searched by Indian soldiers needs to be specifically addressed. No doubt a story of human interest and addressing the theme of man made boundaries merely by stating that the costumes worn of the assessee by itself is not of much help. How the brand of the assessee was propagated, publicized etc. by the said film has not been addressed. Being alive to the argument the costumes used were designed by the assessee however, not having viewed the specific documentary we are unable to comment as to how designing the costume of the Pakistani boy of humble origins and similarly designing the costume of Indian Brahmin hunted by the Indian army. whose costumes would also not have been designed by the assessee. We find ourselves unable to comment upon the same. However being alive to the fact in the marketing of the films sponsorship by the assessee may have been heavily advertised and interest created in order to show case the tribal and local costumes of the area may have been undertaken and they may have carried publicity of the assessee in print or mass media. We leave the issue open to the AO to examine the same de novo. The assessee shall be at liberty to place necessary evidences in support of its claim.

24.6. Coming to the expenditure pertaining to "Road to Ladakh" which again got international acclaim and as per the documents available on record at page 380 of the paper book pertains to the story as has described as "Whacky rites of passage encounter between a dysfunctional, coke-snorting model and an ultra focused stranger". The said movie by its very description does give rise to possibility to show case its products through the model and the stranger who has interacted with her in her travels. As such the issue too needs to be specifically addressed by the assessee. We are guided by the fact that as far as Short films of BMW stories were concerned therein various stories revolved around the driver of BMW car series highlighting their performance aspect and association with glamour of various stars in the said series the star apart from the actors would be the product of the BMW itself i.e. their car which was being featured.

However in the facts of the specific case the product of the assessee is garments and that too high end fashion garments as such how the making of short documentary films is comparable to BMW and Nissan products needs to be addressed. 24.7. Coming to the ratio laid down by the judgement of the Delhi and Rajasthan High Court it is seen that in the facts before the Hon'ble Delhi High Court the sports tournaments by way of advertisement, banners and news reports linking in the public mind DCM's name with the tournament builds public interest in the mind and builds business interest. Similarly in the case of the facts before the Rajasthan High Court a specific trophy was sponsored by the assessee as such which was specifically highlighted and publicized the said event and the display of the sponsor's name on the trophy and brand has been held to have advertisement value. In the facts of the present case as we have addressed earlier how the specific product which was sought to be advertised/marketed has been brought to the notice of the public mind and imagination namely high fashion garments manufactured by the assessee and may be "Preta-porter"

product of line through its "logo" or label as such necessarily the nature of publicity campaigns which took place highlighting the sponsorship of the said films has not been addressed. Even today if on the internet as per page 362 BMW site mentioned therein is clicked the products and short stories can be downloaded. Short films bringing out the specifications of the BMW series can be viewed. However if any such site for advertising the clothes worn by the characters in the two films has been brought 24.8. For considering the allowability of the said expenditure the assessee has to satisfy by way of evidences as to how the wearing of costumes designed by the assessee were published and advertised and marketed. The interest in the costumes created has to be addressed as whether logos/labels displays in the credits or in the documentaries itself or press Conferences were held and publicity material published and issued highlighting the availability of costumes was done which has not been addressed whether the costumes worn are displayed in assessee's website so as make its availability to the interested party has also not been addressed. 24.9. Further another way the sponsoring of two documentaries by the assessee in its business interests can be supported is as to what was shown in the credits of the two films regardless of their social and humane content were marketed, advertised and publicized by the assessee so as to show that the minute one thinks of the two movies it is the name of the assessee which comes to mind as would be in the case of trophies and tournaments as in the cases cited by the assessee.

24.10 Accordingly in the light of the above detailed observations, reasoning and discussion of facts and position of law we restore the issue back to the file of the AO with the direction to entertain fresh evidences which the assessee may care to bring on record qua the expenditure claimed. As such although in principle the argument of short films by which the assessee may bring to the notice of the public/its potential clientele.- customers its products, manufactured or marketed by it and thus advertised and publicized the same is fully concurred with. However, for want of necessary facts, evidences the issue is restored back as the general arguments in support of the claim do not specifically and factually addressed the issue. Further the fact that Shri Ashwin Kumar being a son of the promoter has directed the two films as such the expenditure on the two sponsored films merely by virtue of relationship is barred as has been argued by the Id. DR is not accepted. The said director demonstrably was of international repute and has been bestowed various international awards acclaim, but having thus concluded the factum of receiving international acclaim also by itself does not address the issue at hand as what needs to be addressed is how did the assessee benefit from the said exercise thus whether any publicity marketing, public awareness interest in assessee's garments was created by the sponsoring of the two films needs to be addressed.

24.11. In the light of the above reasoning and finding the issue is restored back to the file of the AO with the direction to decide firstly that there was duplication of the same expenses, secondly if the above is answered in the affirmative the AO shall examine the issue entertaining fresh evidences which the assessee may care to file in

support of the claim. Needless to say that the AO shall pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Accordingly ground no.5 of the assessee and ground no.4 of the department are allowed for statistical purposes.

24.12 Accordingly the appeal of the assessee is partly allowed for statistical purposes.

24.13. In the departmental appeal it is seen that ground. No.1 has been discussed along with the assessee's ground no.2 and has been restored to the AO as such allowed for statistical purposes.

25. The facts pertaining to departmental ground no.2 are found discussed in para 11 page `12 of the assessment order . For ready reference the same is reproduced as under

:-

"11. Website Expenses In the Profit and Loss account, the assessee has debited an amount of Rs.2,78,010/- towards "Website Expenses" Vide Questionnaire dated 12.9.2006, the assessee was asked to furnish the party-wise details of this amount stating clearly the nature of the expenses.

From the details filed by the assessee, it is seen that the following amounts have been paid for use of server space :

| | | |
|------------|---|--------------------|
| Global Tap | : | Rs .1 , 14 , 443/- |
| EV 1 Net | : | Rs .1 , 02 , 177/- |

Vide order sheet entry dated 12.12.2006, the assessee was asked to furnish the copies of bills raised by these two parties. However, no copies of any bill were submitted by the assessee. In these circumstances the amounts of Rs.1,14,443/- and Rs.1,02,177/- are disallowed and added back to the total income of the assessee.

25.1. Against this the assessee went in appeal before the CIT(A). The same is found discussed at 6.10 at pages 40 to 42. A perusal of the proceedings before the CIT(A) shows that in regard to the disallowance of Rs.2,16,620- debited under the head "Website expenses" on the ground of failure of furnishing copies of bills in support of the expenses it was submitted that on account of some constraints the assessee could not file them before the AO and the same were filed before the CIT(A) along with the agreement with the party and evidence in support of the payments having been made. It was also contended that similar expenses have been incurred in the earlier years also. In the Remand Report as culled out in the impugned order in para (c) of para 6.10 the AO observed that the assessee has filed copies of the agreements with the parties. However, the question whether the expenditure can be considered to be revenue or capital in nature was relevant and according to the AO the expenditure on launching of website was to be considered as capital in nature and could not be allowed entirely in the year of this incurring.

25.2. Confronted with the said objection it was submitted by the assessee that the assessee was conducting internet sales and as such it had its own website on which its products were displayed. The customer could purchase the assessee's products on line by logging on to the website. Relying upon the decision of the Hon'ble Delhi High Court in the case of CIT -vs- Indiavisit.com.pvt. Ltd. 176 Taxman 164 the claim was said to be allowable.

25.3. The CIT(A) considering the facts and circumstances of the case was of the view that the expenditure incurred was not for launching of website but for its maintenance and running expenditure. The website in question was launched long back and the expenditure was incurred only on account of maintenance and payment of service charges. Accordingly the AO was directed to delete the expenditure of Rs.2,78,010/-. 25.4. Aggrieved by this the department is in appeal before the Tribunal.

26. The ld. DR contended that in the evidence placed on record by the assessee in the departmental appeal appearing at pages 239 to 260 it was his submissions that the details found mentioned at 240 qua Global Tap and EV 1 Net are not relatable to the bank vouchers of the assessee and the statement of the credit card of Shri Amrish Kumar of the Citi Bank. An effort was made to show that whether these were website expenses or telephone expenses is not clear as the internal voucher of the assessee at page 244 and various other pages showing typed versions as telephone expenses which has been struck off and written by hand as website. Similar position it was his submission has occurred at various other pages in the said evidence namely page 254 etc. It was also his submission that the amounts are also not tallying with the details showing at page 240 either data wise or amount wise. A prayer was made that the issue may be restored to the file of the AO to verify the amounts and the details as well as the purposes.

27. The ld. AR, on the other hand, contended that it is not a disputed fact that the assessee had website in order to display its products and the payments claimed were for the maintenance of the websites. Inconsistencies pointed out by the ld. DR it was his submission can be fully explained. For the said purpose attention was invited to sl.no.1, 2 and 3 of page 240 in the context of Global Tap.com so as to correlate that the amounts spelt out therein qua the details were found explained at pages 241, 245 and 251 respectively and similarly qua sl.no.(6) of EV 1 Net at page 240 was supported by the second entry at page 251. It was his submission that each and every fact as per details at page 240 can be explained.

28. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same we are of the view that the expenses claimed for maintenance of the website in principle has to be allowed. The fact also remains that the relevant bills along with the agreements with the respective parties were placed before the AO does not find any fault with the same. However, in the light of the arguments advanced on behalf of the department it is necessary that the reconciliation of the figures and amounts in regard to the specific payments needs to be done. For the said limited purposes the issue is restored back to the file of the AO as no specific finding on this issue has been given by the CIT(A). The departmental ground in the light of the above direction is allowed for statistical purposes.

29. The facts pertaining to ground no.3 of the department are found discussed at para 14 page 13 to 18 of the assessment order. A perusal of the same shows that the AO noticed that the assessee has debited an amount of Rs.2,45,46,795/- on account of Maintenance and repairs. Considering the site wise details of the expenditure pertaining to Amritsar, Chandigarh, Ludhiana, Bangalore, Chennai, Mumbai, Delhi, Gurgaon and Kolkata. The AO was of the view that the following expenses of the 4 cities to the tune of Rs.1,61,94,830/- was capital expenditure :

| | | |
|---------|---|----------------------------|
| Chennai | : | Rs . 27 , 70 , 222 / - |
| Mumbai | ; | Rs . 96 , 46 , 803 / - |
| Gurgaon | : | Rs . 5 , 542 , 525 / - |
| Kolkata | : | Rs . 32 , 35 , 280 / - |
| | | Rs . 1 , 61 , 94 , 830 / - |

29.1. Aggreived by this the assessee came in appeal before the First Appellate

Authority/ The issue is found discussed in para 6.12 of pages 46 to 51 of the impugned order. The CIT(A) following the orders of the ITAT was directed to delete the addition 29.2. Aggrieved by this the department is in appeal before the Tribunal.

30. The ld. DR Mr.Sindhal in his soft spoken but firm manner contended that in view of the change in the position of law by virtue of Explanation attached to section 30 and 31 of the Act which has been introduced by the legislature by the Finance Act, 2003 w.e.f. 1.4.2004. The issue cannot be stated to be covered by the orders of the Tribunal as there is a change in position of law for the first time in the year under consideration. It was his submission that the claim of the assessee has been allowed in the earlier years on the reasoning that these were rented/leased properties as such the expenditure claimed had to be allowed as a business expenditure. However with the change in law since the expenditure is capital in nature the same cannot be allowed as a business expenditure on the reasoning that it is a leased/rented property.

31. The ld. AR, on the other hand, relying upon the orders of the Tribunal and the impugned order submitted that identical claims have been allowed in the earlier years holding the expenditure to be business expenditure and the said claim in the circumstances has rightly been allowed. The orders of the Tribunal it was submitted have been upheld by the Jurisdictional High Court. Moreover change in the position of law it was argued will not be of much help to the department as the claim of the assessee is that it is a revenue expenditure and fully covered by the orders of the Tribunal.

32. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same, we are of the view that there is merit in the arguments of the ld. DR. It is seen that by Finance Act 2003 w.e.f. 1.4.2004 Explanation to section 30 and 31 of the Income Tax Act have been inserted. For ready reference reproduced hereunder :-

"Rent,rates,taxes,repairs and insurance for buildings

30. 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.] Repairs and insurance of machinery, plant and furniture.

31. In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed -

(i) the amount paid on account of current repairs thereto ;

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

[Explanation - For the removal of doubts, it is hereby declared that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.]"

(highlighted for emphasis by the Bench)

32.1. A perusal of the impugned order shows that the CIT(A) has held that being a business expenditure pertaining to leased/rented premises following the earlier order of the Tribunal the claim has to be allowed. It is seen that the orders of the Tribunal available before the CIT(A) were in the context of position of law as if then prevailed prior to 2004-2005 A.Year which have on the position of law prevailing by the earlier assessment years was upheld by the Hon'ble High Court. However admittedly in the year under consideration there is change in the position of law. As such we deem it appropriate to restore the issue back to the file of the AO to place on record the details of the expenses so as to justify its claim that the expenditure is revenue in nature and not capital. The issues needs to be addressed afresh in the light of the changed position in law. Needless to say that the AO shall pass a speaking order in accordance with law after giving the assessee a reasonable

opportunity of being heard. The departmental ground is accordingly allowed for statistical purposes.

33. Ground No.4 raised by the department has already been considered along with ground no.5 of the assessee. Accordingly for the reasons set out therein the said ground is allowed for statistical purposes.

34. In the result the departmental appeal is allowed for statistical purposes.

35. In the result ITA NO.592/Kol/2009 of assessee is partly allowed for statistical purposes and ITA No.974/Kol/2009 of the department is allowed for statistical purposes.

“ Ū « < > □ THIS ORDER IS PRONOUNCED IN THE COURT ON 03.09.2010.

Sd/-

Sd/-

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C.D. Rao, Accountant Member

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Diva Singh, Judicial Member.

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)Date: 03.09.2010

R.G. (.P.S.)

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Copy of the order forwarded to:

1. M/s.Ritika Private Ltd., 138, Beliaghata Road, Kolkata-700015.

2 The D.C.I.T., Circle-12, Kolkata

3. The CIT, 4. The CIT(A),

5. DR, Kolkata Benches, Kolkata × □ f /True Copy, “ < / By order, Deputy /Asst. Registrar, ITAT, Kolkata Benches