Citi Financial Consumer Finance (I) ... vs Department Of Income Tax on 26 March, 2010

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI 'B' BENCH
BEFORE SHRI R.P. TOLANI, JM & SHRI A.N. PAHUJA, AM

ITA nos.2687,2688 &5191/Del/2010
AYs:2003-04 to 2005-06

M/s City Financial Consumer Finance India Ltd.,(formerly known as 'Associates India Financial Services Ltd.), 3 Local Shopping Centre, Pushp Vihar, New Delhi [PAN : AAABC 3223 B]	V/s.	Assistant Commissioner of Income-tax, Circle 3(1), New Delhi

ITA nos.3144,3145 &5514/Del/2010
AYs:2003-04 to 2005-06

Deputy Commissioner of Income-tax, Circle 3(1),New Delhi	V/s.	M/s City Financial Consumer Finance (I) Ltd., 3, LSC, Pushp Vihar, New Delhi-62

Assessee by	S/Shri C.S. Aggarwal & Ravi Mall, ARs
Revenue by	S/Shri V.K. Saksena & Pradeep Kumar,DRs

Date of hearing	24-02-2012
Date of pronouncement	20-04-2012

ORDER

A.N.Pahuja:- These cross appeals filed on 3-6-2010 by the assessee & on 24.6.2010 by the Revenue against a common order dated 26-03-2010 of the ld. CIT(A)-XVIII for the AYs 2003-04 & 2004-05 and on 23.11.2010 by the assessee & 7.12.2010 by the Revenue against an order dated 8.10.2010 of the ld. CIT(A)- IV, New Delhi, for the AY 2005-06, raise the following grounds:-

2 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 I.T.A. No.2687/D/2010[Assessee-AY 2003-04]

1) "That the ld. CIT(A) has erred both on facts and in law in sustaining disallowance in relation to payment of ``5,00,00,000/- made by the appellant to Kinetic Finance Ltd., to gain access to the detabase and infrastructure of Kinetic Finance Ltd., on the

basis that the expenditure provides an enduring benefit to the appellant and hence is capital in nature.

2) That the ld. CIT(A) has erred both on facts and in law in sustaining disallowance of expenditure amounting to ``29,76,461/- in respect of realignment expenses.

2.1) That the ld. CIT(A) has erred both on facts and in law in sustaining the disallowance on the premise that the expenditure is not recurring in nature and provides enduring advantage to the appellant.

2.2) That the ld. CIT(A) has erred in not appreciating the fact that realignment expenses represent routine advertisement expenditure and are not in the nature of re-branding exercise carried out by the appellant.

3) That the orders passed by the Assessing Officer and the CIT(A) in reference to above grounds of appeal is bad in law.

The appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the hearing of the appeal".

I.T.A. No.2688/D/2010[Assessee-AY 2004-05]

1) "That the ld. CIT(A) has erred both on facts and in law in sustaining disallowance of expenditure amounting to ``1,05,94,000/- in respect of realignment expenses.

1.1 That the learned CIT(A) has erred both on facts and in law in sustaining the disallowance on the premise that the expenditure is not recurring in nature and provides enduring advantage to the appellant.

1.2 That the learned CIT(A) has erred in not appreciating the fact that realignment expenses represent routine 3 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 advertisement expenditure and are not in the nature of re-branding exercise carried out by the appellant.

2) That the orders passed by the Assessing Officer and the CIT(A) in reference to above grounds of appeal is bad in law.

The appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal."

I.T.A. No.5191/D/2010[Assessee-AY2005-06]

1) "That the ld. CIT(A) has erred both on facts and in law in sustaining disallowance of expenditure amounting to ``1,04,03,761/- in respect of realignment expenses.

1.1 That the ld. CIT(A) has erred both on facts and in law in sustaining the disallowance on the premise that the expenditure is capital in nature.

1.2 That the ld. CIT(A) has erred in not appreciating the fact that expenditure of ``1,04,03,761/- is nothing but reversal of provision created in earlier years and that since the provision was disallowed in the year in which it was created, reversal of the same in the current year deserves to be allowed.

2) That the orders passed by the Assessing Officer and the CIT(A) in reference to the above ground of appeal is bad in law.

The appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal."

I.T.A. No.3144/D/2010[Revenue-AY 2003-04]

1) "The ld. CIT(A) has erred in law and on facts in deleting the addition of ``9,97,48,800/- made on account of capitalization of advertisement expenses ignoring the fact that benefit of enduring nature was drawn by the assessee while incurring such expenditure.

2) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``1,90,35,562/- made on account of 4 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 capitalization of leasehold improvement expenses ignoring the fact that benefit of enduring nature was drawn by the assessee while incurring such expenditure.

3) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``1,62,83,282/- made on account of non- convertible debentures and commercial paper issue expenses ignoring the fact that such expenditure was relevant for a period of 5 years.

4) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``8,68,76,973/- made on account of capitalization of loan acquisition fee without considering the fact that these expenses should be amortized over the tenure of loans given by the assessee in the same way as is done in the books, by the assessee.

5) The learned CIT(A) erred in law and on facts in deleting the addition of ``20,37,34,458/- made on account of capitalization of direct selling agent commission expenses without considering the fact that these expenses do not have a chargeability to the year in which these are incurred and have a direct bearing over the tenure of the loan period.

6) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``7,29,73,000/- made on account of loss on sale of repossessed assets ignoring the fact that the repossessed assets do not constitute assessee's stock in trade and therefore loss on sale of repossessed assets cannot be held as revenue loss for the assessee company.

7) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``72,00,478/- made on account of disallowance of extra depreciation claimed by the assessee on computer accessories, ignoring the fact that as per Income-tax Rules only computers and computer software are eligible for depreciation of 60% the same cannot be extended to computer accessories and peripherals.

8) The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

5 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 I.T.A. No.3145/D/2010[Revenue-AY 2004-05]

1) "The ld. CIT(A) has erred in law and on facts in deleting the addition of ``13,88,32,000/- made on account of capitalization of advertisement expenses ignoring the fact that benefit of enduring nature was drawn by the assessee while incurring such expenditure.

2) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``1,76,13,260/- made on account of capitalization of leasehold improvement expenses ignoring the fact that benefit of enduring nature was drawn by the assessee while incurring such expenditure.

3) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``11,38,85,144/- made on account of capitalization of loan acquisition fee without considering the fact that these expenses should be amortized over the tenure of loans given by the assessee in the same way as is done in the books, by the assessee.

4) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``31,25,87,254/- made on account of capitalization of direct selling agent commission expenses, without considering the fact that these expenses do not have a chargeability to the year in which these are incurred and have a direct bearing over the tenure of the loan period.

5) The ld. CIT(A) erred in law and on facts in deleting the addition of ``7,37,84,000/- made on account of loss on sale of repossessed assets ignoring the fact that the repossessed assets do not constitute assessee's stock in trade and therefore loss on sale of repossessed assets cannot be held as revenue loss for the assessee company.

6) The ld. CIT(A) has erred in law and on facts in deleting the addition of ``54,51,474/- made on account of disallowance of extra depreciation claimed by the assessee on computer accessories, ignoring the fact that as per Income Tax Rules only computers accessories, ignoring the fact that as per Income-Tax Rules only computers and computer software are eligible for 6 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 depreciation of 60%, the same cannot be extended to computer accessories and peripherals.

7) The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

I.T.A. No.5514/D/2010[Revenue-AY 2005-06]

1) "On facts and circumstances of the case, the ld. CIT(A) has erred in deleting the addition of ``25,30,57,276/- on account of capitalization of advertisement, publicity and sales promotion expenses ignoring the fact that benefit of enduring nature was drawn by the assessee.

2) On the facts and circumstances of the case, the ld. CIT(A) has erred in deleting the addition of ``6,56,68,462/- made on account of capitalization of leasehold improvement expenses ignoring the fact that benefit of enduring nature was drawn by the assessee.

3) On the facts and circumstances of the case, the ld. CIT(A) has erred in deleting the addition of ``28,67,50,647/- made on account of loan acquisition fee and amortization of the same over a period of 5 years ignoring that allowing the entire expenditure in one year gives a distorted picture of the profit of a particular year.

4) On the facts and circumstances of the case, the ld. CIT(A) has erred in deleting the addition of ``50,40,27,813/- on account of capitalization of Direct Selling Agent commission expenses and amortization of the same over a period of 5 years ignoring that allowing the entire expenditure in one year gives a distorted picture of the profit of a particular year.

5) On the facts and circumstances of the case, the ld. CIT(A) erred in deleting the addition of ``6,04,25,724/- on account of loss on reposed assets, ignoring the fact that the said assets do not constitute the assessee's stock in trade.

6) On the facts and circumstances of the case, the ld. CIT (A) has erred in law and on facts in deleting the addition 7 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 of ``2,19,83,723/- on account of disallowance of extra depreciation on computer peripherals/accessories ignoring that as per the I.T. Rules 60% depreciation is allowable only on computer and computer software and not on computer peripherals and accessories.

7) On the facts and circumstances of the case, the ld. CIT(A) has erred in law and on facts in deleting the addition of ``2,70,72,940/- on account of capitalization NCD and commercial paper issue expenses and amortization of the same over a period of 5 years ignoring that allowing the entire expenditure in one year gives a distorted picture of the profits of a particular year.

8) The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

2. Adverting first to ground no.1 in the appeals of the Revenue for these three assessment years, facts, in brief, as per relevant orders for the AY 2003-04 are that return declaring income of `30,73,85,800/- filed on 28th November, 2003 by the assessee, a non-banking finance company, after being processed on 01.03.2004 u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') was selected for scrutiny with the service of a notice u/s 143(2) of the Act, issued on 15.10.2004. During the course of assessment proceedings, the Assessing Officer (A.O. in short)

noticed that the assessee debited an amount of ``12,46,86,000/- on account of advertisement, publicity and sales promotion expenses. Since in the AYs 2001-02 and 2002-03, the AO spread over the advertisement expenses over a period of 5 years, to a query by the AO as to why advertisement and publicity expenses be not spread over a period of 5 years in the year under consideration, the assessee replied that the said expenditure is revenue in nature incurred for the purpose of their business purpose. However, the AO did not accept the submissions of the assessee and relying on his own findings in the AYs 2001-02 and 2002-03 as also decision of Hon'ble Supreme Court in Madras Industrial Development Corporation Vs. CIT 8 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 225 ITR 802(SC) allowed only 1/5th of these expenses in the AY 2003-04 and disallowed the remaining amount of ``9,97,48,800/-.

2.1 Similarly in the AY2004-05, following his findings for the preceding assessment years, the AO allowed only 1/5th expenses of ``17,35,40,000/- and disallowed the remaining amount of ``13,88,32,000/- while in the AY 2005-06, the AO disallowed expenses of ``25,30,57,277/- out of ``31,63,21,595/- .

3. On appeal, the ld. CIT(A) after admitting additional evidence submitted by the assessee in terms of rule 46A(4) of the IT Rules,1962, allowed the claim of the assessee in the AYs 2003-04 & 2004-05 while relying on the decision of ITAT in the assessee's own case for the AYs 2001-02 and 2002-03, in the following terms:-

> "6. I have gone through submissions made by the appellant and have examined the details filed before me. The matter is covered in appellant's favour by the decision of Delhi Bench of Hon'ble ITAT in appellant's own case for assessment year 2001-02 and 2002-03. Since the nature of expenses incurred is similar to those in assessment year 2001-02 and assessment year 2002-03 and there is no change in the factual and legal matrix of the case, respectfully following the aforesaid decision of ITAT and the plethora of case laws relied upon by the learned AR, I hold that the expenses on advertisement and publicity have to be allowed in full as revenue expenditure during the year under consideration. Therefore, the disallowance made by the Assessing Officer in assessment order, amounting to ``9,97,48,800/- for assessment year 2003-04 and ``13,88,32,000/- for assessment year 2004-05, in this regard are deleted."

3.1 Similarly, in the appeal of the assessee for the AY 2005-06, the ld. CIT(A) concluded as under:

"4. I have gone through the order of the learned Assessing Officer and the submissions made by the learned AR of the assessee. It is observed that the issue stands covered by the decision of my ld. Predecessor in an order dated 26.03.2010 in 9 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 appeal No.100/07-8 and 99/07-08. At page 23, the learned CIT(A) has come to the following conclusion:

> "6. I have gone through submissions made by the appellant and have examined the details filed before me. The matter is covered in appellant's favour by the decision of

Delhi Bench of Hon'ble ITAT in appellant's own case for assessment year 2001-02 and 2002-03. Since the nature of expenses incurred is similar to those in assessment year 2001-02 and assessment year 2002-03 and there is no change in the factual and legal matrix of the case, respectfully following the aforesaid decision of ITAT and the pleathora of case laws relied upon by the learned AR, I hold that the expenses on advertisement and publicity have to be allowed in full as revenue expenditure during the year under consideration. Therefore, the disallowance made by the Assessing Officer in assessment order, amounting to ``9,97,48,800/- for assessment year 2003-04 and ``13,88,32,000/- for assessment year 2004-05, in this regard are deleted."

5. It is further seen that in a combine order in assessee's own case for the assessment year 2001-02 and 2002-03, the Hon'ble Tribunal at pages 9 to 12 has held as under:

"23 We have carefully considered the submissions and perused the records. We find that the said advertisement expenditure has actually been incurred during the year. The nature of expenditure does not fall under the ambit of preliminary expenses as envisaged u/s 35D of the Act. When the expenditure was incurred and there is nexus between the expenditure and the assessee's business, we do not see any reason why the entire expenditure should not be allowed in full during the concerned year. The case laws from Jurisdictional High Court in Salora International case cited above referred by the learned counsel of the assessee duly supported the case that when expenditure and assessee business, the expenditure has to be allowed in full and not deferred by spread over certain number of years.

24. As regards the decision of the Hon'ble Madras High Court in the case of Madras Fertilizers Ltd. 209 ITR 174, we find that the same is not applicable on the facts of the case. In this case the facts were inter alia as under:-

10 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 "The assessee started its business on November 1, 1971. In the assessment year 1972 73, the assessee claimed deduction of expenditure of ``35,55,769/ on publicity and promotional expenses incurr3ed during the years 1967 68, 1968 69and 1969 70 and prior to March 31, 1970. This included seeding programme expenses, advertisement and sales promotion, establishment expenses, expenses under technical assistance agreements etc. This was disallowed by the Income Tax Officer as it was incurred prior to April 1, 1970. However, the Tribunal allowed the same.

The assessee claimed deduction u/s 35D of the expenditure of ``15,36,631/ incurred on advertisement and publicity, subsidy to farmers warehousing and other handling charges and depreciation. The Tribunal allowed the expenses claimed to the extent of ``11,93,263/ u/s 35D disallowing warehousing and other handling charges and depreciation."

24.1 The Hon'ble High Court inter-alia held as under:-

"(i) that the expenditure incurred on publicity and promotional expenses amounting to ``35,55,769/- during the years 1967-68, 1968-69 and 1969-70 prior to March 31, 1970 were not deductible in the assessment year 1972-73.

ii) That the expenditure incurred on publicity and promotional expenses amounting to ``35,55,769/- during the years 1967-68, 1968-69 and 1969-70 prior to March 31, 1970 were revenue in nature and not capital in nature and could not be considered to be part of the actual cost;

11 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010

(iii) that the Tribunal was justified in law in holding that a sum of ``11,93,263/- incurred by the assessee by way of advertisement expenses, and by way of subsidy to farmers' field extension programme, farmer dealer meeting. etc.. and soil test expenses should be allowed as admissible deductions u/s 35D. The Tribunal rightly came to the conclusion that on warehouse and other handling charges and depreciation no deduction u/s 35D could be allowed."

24.2 From the above it is clear that it was assessee's claim that certain expenditure on advertisement were actually expenditure u/s 35D and Hon'ble High Court had noted that the Tribunal had found the expenditure incurred under the various heads were necessary for marketing the products and Hon'ble High Court found that terms 'survey' mentioned in section 35D(2)(a)(iii) and compass the same. However, in the present case we find that no case has been made that the nature of advertisement in this case comes under the term of survey. Moreover, the jurisdictional High Court on identical subject in CIT Vs. Salora International Ltd. 308 ITR 199 has held that expenditure of such nature has to be allowed as a whole.

24.3 In the background of the aforesaid discussion and precedent, we set aside the orders of authorities below and decide the issue in favour of the assessee.

6. It is crystal clear that the Hon'ble Tribunal has given a decision in favour of the assessee. The decision of the Tribunal is binding on me and, therefore, the assessee deserves to succeed in ground of appeal No.2 and its part."

4. The Revenue is now in appeal before us against the findings of learned CIT(A).The ld. DR supported the orders of the AO. On the other hand, the ld. ld AR on behalf of the assessee while inviting our attention to an order dated 18th December, 2009 of the ITAT in assessee's own case for the AYs 12 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 2001-02 and 2002-03 in I.T.A. nos.4035, 4617/2005 and 2460/2673/2006, upheld by the Hon'ble High Court in their order 30.03.2011 in I.T.A. nos.1820/2010; 1974/2010, 1/2011 and 5/2011 contended that the issue is squarely covered by the said decision. The ld. AR added that SLP filed by the Revenue against the decision dated 30th March, 2011 of the Hon'ble High Court, has been dismissed by the Hon'ble Supreme Court.

5. We have heard both the parties and gone through the facts of the case. Indisputably and as pointed out by the ld. CIT(A) in the impugned orders and the AO in his assessment orders, facts and circumstances in the years under consideration are similar to the facts and circumstances in the AYs 2001-02 & 2002-03.We find that Hon'ble jurisdictional High Court in their aforesaid decision dated 30th March, 2011 while adjudicating a similar issue in the AYs 2001-02 and 2002-03 concluded as under:-

> "8. From the facts noted above and on the basis of submissions of learned counsel for the parties, following aspects clearly emerge as undisputable: -
>
> (a) The expenditure in question is incurred by the assessee in the relevant assessment years in which the assessee is claiming deduction thereof under Section 37 of the Act.

Thus there is no dispute that the expenditure is in fact incurred.

(b) It is also not in dispute that the expenditure in question is business expenditure incurred wholly for the purpose of the business of the assessee.

(c) The expenditure incurred in the nature of advertisement and publicity is incurred forever and in no manner any portion thereof reverts back to the assessee.

9. The aforesaid facts would demonstrate that the ingredients of Section 37 of the Act stand satisfied. Therefore, normally the expenditure is to be allowed as business expenditure in the year in question in which the same is incurred. In this backdrop, we have to consider the arguments of the Revenue predicated on the so called enduring benefit which is the expenditure on account of advertisement and publicity confers. This argument is based on the judgment of the Apex Court in Madras Industrial Investment Corporation Ltd.(supra). In that case, the Supreme Court had referred to this 'matching concept'. It was held that ordinarily revenue expenditure incurred wholly or exclusively for the purpose of business, can be applied in the year in which it is incurred. However, the facts may justify spreading the expenditure and claiming it over a period of ensuing 13 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 years, where allowing the entire expenditure in one year could give a very distorted picture of the profits of a particular year. One such instance was issuing debentures at discount. The Supreme Court was of the opinion that though in such cases the assessee had incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure the benefit over a number of years. There was a continuing benefit to the assessee of the company over the entire period and, therefore, the liability was to be spread over the period of debentures.

10. We are unable to persuade ourselves by the aforesaid submission of the learned counsel for the Revenue. Identical argument was taken by the Revenue in IFCI (supra). Explaining the ratio of Supreme Court in Madras Industrial Investment Corpn. Ltd. (supra), the argument of the Revenue was rejected in the following manner:-

"The judgments on which reliance is placed by the learned Counsel for the Revenue would be of no avail in the instant case. The learned Counsel for the Revenue had strongly argued that matching concept is to be applied, as per which part of the expenditure had to be deferred and claimed in the subsequent years and, therefore, approach of the AO was correct. However, this argument overlooks that even in Madras Industrial Investment Corporation (supra), on which the reliance was placed by Ms. Bansal, the general principle stated was that ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business can be allowed in the year in which it is incurred. Some exceptional cases can justify spreading the expenditure and claiming it over a period of ensuing years. It is important to note that in that judgment, it was the assessee who wanted spreading the expenditure over a period of time as was justifying such spread. It was a case of issuing debentures at discount; whereas the assessee had actually incurred the liability to pay the discount in the year of issue of debentures itself. The Court found that the assessee could still be allowed to spread the said expenditure over the entire period of five years, at the end of which the debentures were to be redeemed. By raising the money collected under the said debentures, the assessee could utilize the said amount and secure the benefit over number of years. This is discernible from the following passage in 14 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 that judgment on which reliance was placed by the learned Counsel for the Revenue herself:

"The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3,00,000 in that accounting year. This conclusion does not appear to be justified looking to the nature of the liability. It is true that the liability has been incurred in the accounting year. But the liability is a continuing liability which stretches over a period of 12 years. It is, therefore, a liability spread over a period of 12 years. Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirely in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. Thus in the case of Hindustan Aluminium Corporation Ltd. v. Commissioner of Income-Tax, Calcutta-I (1983) 144 ITR 474 = (2003-TIOL- 137-HC-KOL-IT), the Calcutta High Court upheld the claim of the assessee to spread out a lump sum payment to secure technical assistance and training over a number of years and allowed a proportionate deduction in the accounting year in question.

Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability

should, therefore, be spread over the period of the debentures."

15 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 Thus, the first thing which is to be noticed is that though the entire expenditure was incurred in that year, it was the assessee who wanted the spread over. The Court was conscious of the principle that normally revenue expenditure is to be allowed in the same year in which it is incurred, but at the instance of the assessee, who wanted spreading over, the Court agreed to allow the assessee that benefit when it was found that there was a continuing benefit to the business of the company over the entire period."

11. This Court, thus, explained in no uncertain terms that the normal rule accepted by the Supreme Court in the said judgment was that the expenditure is to be allowed in the year in which it was incurred. Only at the instance of the assessee who wanted to spread over, the court had agreed to allow the assessee the benefit after finding that there was a continuing benefit to the company over the entire period. The ratio of this judgment was thus summarized in the following manner:-

> "What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the Income Tax department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of matching concept is satisfied, which upto now has been restricted to the cases of debentures.'

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

> 16 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 "There may be cases where expenditure, even if incurred for obtaining advantage, of enduring benefit, may, none-the-less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assesses that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's

trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably white leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is therefore not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

13. Applying the aforesaid principle to the facts of this case, it clearly emerges that the expenditure on publicity and advertisement is to be treated as revenue in nature allowable fully in the year in which it was incurred. Concededly, there is no advantage which has accrued to the assessee in the capital field. The expenditure was incurred to facilitate the assessee's trading operations. No fixed capital was created by this expenditure. We may also add here that in the Income-Tax laws, there is no concept of deferred revenue expenditure. Once the assessee claims the deduction for whole amount of such expenditure, even in the year in which it is incurred, and the expenditure fulfills the test laid down under Section 37 of the Act, it has to be allowed. Only in exceptional cases, the nature mentioned in Madras Industrial Corporation (supra), the expenditure can be allowed to be spread over, that too, when the assessee chooses to do so.

14. We thus are of the opinion that the aforesaid question of law as formulated by the Revenue has to be answered in favour of the assessee. "

5.1 As pointed out by the ld. AR, SLP filed by the Revenue against the aforesaid decision has been dismissed by the Hon'ble Supreme Court in their order dated 5.12.2011 in SLP (CC 19979/2011).

17 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 5.2 In the light of aforesaid view taken by the Hon'ble jurisdictional High Court, especially when the Revenue have not placed before us any material, controverting the aforesaid findings of the ld. CIT(A) so as to enable us to take a different view in the matter nor brought to our notice any contrary decision, we have no hesitation in upholding the findings of the ld. CIT(A). Therefore, ground no.1 in the appeals of the Revenue for these three assessment years is dismissed.

6.. Ground no.2 in these three appeals of the Revenue relates to capitalization of leasehold improvement expenses. The AO noticed during the course of assessment proceedings that the assessee claimed leasehold improvement expenses of `1,90,35,562/- on account of renovation carried out in the leased premises, as revenue expenditure in the AY 2003-04 while the assessment records for the preceding years revealed that the assessee treated such expenditure as capital in nature. To a query by the AO, the assessee explained that the said expenditure was incurred on laying of cables, electrical connections, installation PVC conduits, CATs, sanitary fittings, partitions & pin boards, civil works, brick work, water proofing, flooring, false ceiling, wall finishes, toilet furnishings, painting, earthling, switches

> &,glazing on ventilators, and all these items are in the nature of revenue expenses. Since there was no expenditure on addition or extension of building in the leased premises, expenditure could not be capitalized, the assessee pleaded. However, the AO did not accept the submissions of the assessee in the light of explanation 1 to sec. 32(1) of the Act and while relying upon decisions in CIT vs. Indian Metal & Metallurgical Corporation,141 ITR 40(Mad.),CIT vs.Lake Palace Hotels & motels (P) Ltd.,131 ITR 836(Raj.),M.Subbiah Nadar vs. CIT,23 ITR 58(Mad.),CIT vs. Chandra Agro Pvt. Ltd.,117 ITR 251(All.),Addl. CIT vs. Lawly Enterprises (private) Ltd.,100 ITR 369(Pat.)& Mysore Minerals Ltd. vs. CIT,239 ITR 775(SC),disallowed the claim of expenditure of `1,90,35,562/- and allowed depreciation @10% thereon. .

18 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 6.1 Similarly, the AO disallowed an amount of ``1,76,13,260/- in the AY 2004-05 and ``6,56,68,462/- in the AY 2005-06 and allowed depreciation @10% thereon.

7. On appeal, the ld. CIT(A) allowed the claim of assessee in the AYs 2003-04 & 2004-05 in the following terms:-

"8. I have considered the submissions made by the appellant and also perused the details filed in the paper book. This matter has been decided by my predecessor in favour of the appellant in assessment year 2002-03 and further the Department's appeal on this issue has been rejected by the Hon'ble ITAT. Since the facts and arguments advanced are similar to the position in assessment year 2002-03 respectfully following the aforesaid order of ITAT, the expenditure on leasehold improvements is to be allowed for deduction as revenue expenditure. Accordingly, the disallowance made by the Assessing Officer in the assessment order amounting to ``1,71,32,006/- (net of depreciation) for assessment year 2003- 04 and ``15,851,934/- (net of depreciation) for assessment year 2004-05 is deleted."

7.1 Similarly, the ld. CIT(A) allowed the claim of the assessee in the AY 2005- 06,holding as under:

> "10 I have gone through the order of the learned Assessing Officer and the submissions made by the learned AR of the assessee. For the assessment year 2001-02 and assessment year 2002-03, the Hon'ble Tribunal in an order pronounced in 18.12.2009 has decided in favour of the assessee at paras 35 to
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> 39. It reads as follows:
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> "35. Upon consideration of the assessee's submission the learned CIT(A) gave a finding that he has perused the details filed by the assessee and found that assessee has already bifurcated the expenditure into capital and revenue. Learned CIT(A) observed that Assessing Officer has not at all gone into these details which were pointed out at the time of assessment proceedings itself. Learned CIT(A) observed that the Assessing Officer has not pointed out any of the items which should be considered as capita. Learned CIT(A) held that from the assessment order, it is clear

that Assessing Officer has just treated the matter in a very cursory and summary manner without going into the details and giving cogent 19 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 basis for the disallowance. Accordingly, learned CIT(A) allowed assessee appeal on this issue.

36. Against this order the revenue is in appeal before us.

37. It has been contended by the revenue that details of expenses were not produced before the Assessing Officer.

38. On the other learned counsel of the assessee contended that the details were duly produced and the Assessing Officer has chosen to ignore the same. However, he submitted that the learned CIT(A) has duly considered the same and gave a finding that the amount involved is allowable as revenue expenditure, hence he argued that the learned CIT(A)'s order should be upheld.

39. We have carefully considered the submissions, we find that the learned CIT(A) has given a categorically finding that the assessee has duly produced all the necessary details and that the assessee has duly identified the capital portion of the expenditure incurred and the amount on the improvements expenses which were of revenue in nature. We also find that it is a settled law that powers and duties of the CIT(A) are co-terminus with that of Assessing Officer. Hence, in our considered opinion, there is no need to interfere with the finding of the learned CIT(A). Accordingly, we uphold the same."

11. Once the Hon'ble Delhi Tribunal has decided in favour of the assessee. I have no option but to decide this ground of appeal in the assessee's favour. Being a higher judicial forum, the decision of the Tribunal becomes binding on me, unless a superior Court decides otherwise, for which no evidence has been brought in the impugned order. Thus, ground of appeal No.3 is decided in favour of the assessee."

8. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. DR supported the orders of the AO while relying upon decision in Indian Metal & Metallurgical Corporation(supra). On the other hand, the ld. ld AR on behalf of the assessee while inviting our attention to an order dated 18th December, 2009 of the ITAT in assessee's own case for the AYs 2001-02 and 2002-03 in I.T.A. nos.4035, 4617/2005 and 2460/2673/2006, upheld by the Hon'ble High Court in their order 30.03.2011 in I.T.A. nos.1820/2010;

20 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 1974/2010, 1/2011 and 5/2011 contended that the issue is squarely covered by the said decision. The ld. AR added that SLP filed by the Revenue against the decision dated 30th March, 2011 of the Hon'ble High Court, has been dismissed by the Hon'ble Supreme Court.

9. We have heard both the parties and gone through the facts of the case. At the outset, decision of Hon'ble Madras High Court relied upon by the ld. DR in Indian Metal & Metallurgical Corporation(supra) ,where in it was held that partitions and false ceilings provided by the assessee in Cinema house were classifiable as fittings and not buildings and consequently entitled to depreciation@15%, is not applicable in the instant case in view of decision dated 15.9.2008 of the Hon'ble jurisdictional High Court in CIT vs. Hi Line Pens Pvt. Ltd in ITA no.1202/2006,whereinHon'ble High Court upheld the findings of the ITAT, holding that expenditure towards false ceiling, fixing tiles, replacing glasses, wooden partitions, replacement of electric wiring, earthling, replacement of GI pipes etc. was revenue in nature. The ld. DR did not bring to our notice any decision of the Hon'ble jurisdictional High Court where in contrary view has been taken. With due respect, in view of aforesaid decision of jurisdictional High Court, we are unable to subscribe to the views of the Hon'ble Madras High Court.

9.1. Indisputably and as pointed out by the ld. CIT(A) in the impugned orders and the AO in his assessment orders, facts and circumstances in the years under consideration are similar to the facts and circumstances in the AYs 2001-02 & 2002-03.We find that Hon'ble jurisdictional High Court in their aforesaid decision dated 30th March, 2011 while adjudicating a similar issue in the AYs 2001-02 and 2002-03 concluded as under:-

> "20. The argument of Mrs. Bansal was that the nomenclature of items of expenditure namely sanitary, fittings, civil works, brickworks, flooring etc. would clearly show that this expenditure could be capital in nature. Her grievance was that the CIT (A) or the Tribunal did not go into this question at all and simply accepted the bifurcation given by the assessee in capitalizing the portion of the expenditure and treating the part of the expenditure as revenue. Her plea, therefore, was that the matter be remitted back to the AO. She conceded, at the same time, that even the AO had not done this exercise. It is clear 21 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 that the Assessing Officer had not gone into the question as to whether the expenditure incurred on leasehold improvements was capital or revenue in nature. A large number of premises are taken on lease by the assessee throughout the country and expenditure on improvements of these lease premises was incurred by the assessee. The assessee has treated part of the said expenditure as capital in nature and depreciation thereon. In so far as expenditure to the extent of Rs. 1.52 crores is concerned, the same is treated as revenue in nature.
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> 21. Mrs. Bansal may not be correct in her submission that the CIT (A) simply accepted the assertion of the assessee. The order of the CIT reveals that the plethora of documents in respect of expenditure incurred on leasehold improvements to the extent of Rs. 1.52 crores was filed at pages 282 to 336 of the paper book. The order of the CIT(A) clearly reveals that he had "perused the bills filed by the appellant and also verified its various assertions".

Thus the CIT (A) accepted the stand of the assessee only after verification of the records and arriving at a finding of fact that the expenditure on the aforesaid account was revenue in nature. In this

backdrop, the ITAT has observed that the CIT (A) had verified the details produced by the assessee and gave his categorical finding based thereupon. This would, thus, be a mere question of fact and no question of law arises thereupon.

9.2 In the light of aforesaid view taken by the Hon'ble jurisdictional High Court, especially when the Revenue have not placed before us any material, controverting the aforesaid findings of the ld. CIT(A) so as to enable us to take a different view in the matter nor brought to our notice any contrary decision, we have no hesitation in upholding the findings of the ld. CIT(A). Therefore, ground no.2 in the appeals of the Revenue for these three assessment years is dismissed.

10.. Ground no.5 in the appeal of the Revenue for the AY 2003-04 and ground no.4 in their appeals for the AYs 2004-05 and 2005-06 relate to disallowance of DSA commission. The AO noticed during the course of assessment proceedings for the AY 2003-04 that the assessee claimed DSA commission of ``30,56,01,687/- while in the preceding assessment years 2001- 02 and 2002-03, the DSA commission expenses were amortized over a period of 3 years , these being not pertaining exclusively to the current year. To a query by the AO, the assessee replied that as per the accounting policy of the assessee Dealer/agent commission paid or payable was amortized over the tenor of the loan. However, if case was foreclosed such commission was recognized as expense at the time of foreclosure. The assessee followed international accounting standard FAS 91 on 'accounting for non-refundable fees 22 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 and cost associated with originating or acquiring loans and initial direct costs of leases' and in the tax return, the amount debited in the profit and loss account has been added back and actually incurred by the assessee was claimed as revenue expenditure. DSA commission being one time cost payable in the year in which the loan was given to the borrower and being non-refundable, was allowable in the year under consideration, the assessee argued. However, the AO did not accept the submissions of the assessee and following his decision for the AY 2001-02 & decision of the Hon'ble Supreme Court in Madras Industrial Investment Corporation Ltd. Vs. CIT,225 ITR 802, concluded that the nature of the expense was such that the benefit being for a number of years, the expenditure has to be spread to number of years. Accordingly, while allowing only 1/3rd of the total DSA commission ,disallowed the remaining amount of ``20,37,34,458/-

10.1 Similarly, in the AYs 2004-05 and 2005-06, the AO allowed only 1/3rd of the expenses out of DSA Commission and disallowed an amount of ``31,25,87,254/- in the AY 2004-05 and ``50,40,27,813/- in the AY 2005-06.

11. On appeal, the ld. CIT(A) following the decisions of the ITAT in the assessee's own case for the AYs 2001-02 and 2002-03, allowed the claim of the assessee in the AYs 2003-04 & 2004-05 in the following terms:-

> "14 I have gone through submissions made by the appellant and have examined the details filed before me. On perusal of the DSA agreements. It is found that DSA commission is not a period cost and is not linked to the period of the loan as stated by the Assessing Officer. Also, under no circumstances, the amount is liable to be returned to the appellant. The matter is covered in appellant's favour by the decision

of Delhi Bench of Hon'ble ITAT in appellant's own case for assessment year 2001-02 and 2002-03 where the Hon'ble ITAT had made similar observations. Since the nature of expenses incurred is similar to those in assessment year 2001-02 and assessment year 2002-03 and there is no change in the factual and legal matrix of the case, respectfully following the aforesaid decision of Hon'ble ITAT, the expenses on account of DSA commission have to be allowed in full and cannot be deferred by spreading over certain number of years. Therefore, the 23 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 disallowance of expenses made by the Assessing Officer in assessment order, amounting to ``20,37,34,458/- for assessment year 2003-04 and ``31,25,87,254/- for assessment year 2004-05, in this regard are deleted."

11.1 Following his aforesaid order in the AYs 2003-04 and 2004-05, the ld. CIT(A) allowed the claim in the AY 2005-06,holding as under:

"19. I have considered the order of the Id. AD and the submissions made by the Id. AR of the assessee. For AY 2001-02 and 2002-03, the Hon'ble Delhi Tribunal has dealt with the case and the issue in great detail and has held as under:

"30. We have heard both the counsels and perused the records. We find that in the present case before us the only case made out by the AD is that the assessee has been financing the hire purchase of vehicles and homes etc. and the period of such financing is for a certain period going beyond the assessment year. Hence, on the premise that the period of financing is for certain number of years, the AD is of the opinion that the amount spent on the direct selling agents commission and stamping fee should also be spread accordingly. As such we accept the Id. counsel of the assessee's contention that there is no issue before us as to whether there is a nexus between amount paid as commission and the disbursement of loan in the concerned year. Hence, the reliance of the DR on the above said Tribunal decision is not applicable.

30.1 Now in this case, we find that the expenditure has actually been incurred by the assessee in the impugned financial years. The commission become due and payable to the agents as soon as the business is procured by them. Under no circumstances, the amount is liable to be returned to the assessee. It is also evident from the documents regarding AO's enquiry and assessee's response that A0 has duly examined the aspect and found that in the current period the amount paid as commission is not at all linked with the loan disbursement during the year. It is also evident that amount paid as commission in a particular year can in not way be claimed as refund by the assessee under any circumstances, even if the amount financed is forfeited. We also find form the orders of the authorities below and in the written submission filed by the assessee before them that neither of the authorities below have disputed either to nature of services rendered by agents or how the liability to pay the commission is 24 ITA nos.3144&3145,5514

&5191,2687&2688/Del./2010 computed. It has also not disputed that how the brokerage is payable and is linked to what. The only case made out by the revenue is that expenditure should be spread over a certain period of time. In our opinion, there is no cogency in the case made out by the revenue. It IS an accepted position that assessee treatment in its accounts books is not determinative of the actual nature of the transaction. It is also admitted that there is nexus between the expenditure and the assessee's business. Under such circumstances, there is no reason why the expenditure incurred would not be allowed as a whole.

Following case laws support the view point.

Hon'ble Apex court in the case of Calcutta Co. Ltd. Vs. CIT 37 ITR 1 has held that the sum of Rs.24,809/- represented the estimated amount which would have to be expended by the assessee in the course of carrying on its business and was incidental to the business and, having regard to the accepted commercial practice and trading principles, was a deduction which, if there was no specific provision for it under section 10(2) of the Income Tax Act, was certainly an allowable deduction, in arriving at the profits and gains of the business of the appellant, under section 10(1) of the Act, there being no prohibition against it, express or implied, in the Act.

The expression "profit or gains" in section 10(1) of the IT Act has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted there from - whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date. n Further, Hon'ble Jurisdictional High Court decision in the case of CIT Vs. Salora International Ltd. 308 ITR 199 referred earlier has held that where the expenditure is actually been incurred and there was nexus between the expenditure and the assessee's business, the expenditure has to be allowed in full and not deferred by spreading over certain number of years. It is also a settled law that accounting entries in the assessee books are not determinative of actual nature of transaction. This proposition duly draws support from Hon'ble Apex Court decision in 227 ITR 172 in the case of Tuticorin Alkali Chemicals Vs. CIT.

25 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 30.2 It will also be apt to refer to the decision of the Hon'ble Apex Court in the case of CIT vs. Associated Cement Companies Ltd. in 172 ITR 257 wherein the facts are as under:-

"The respondent company, a manufacturer of cement, was running a cement factory at Shahabad. The then Government of Hyderabad included the factory premises within the limits of Shahabad Municipality. A tripartite agreement was entered into between the government, the municipality and the respondent company, whereby the company undertook (i) to supply water to the municipality and provide water pipelines, (ii) to supply electricity for street lighting in the municipality and put up a

> transmission line therefore, and (iii) to concrete the main road from the factory to the railway station. In return, the respondent was not liable to pay municipal rates and taxes for a period of 15 years. During the previous year relevant to the assessment year 1959-60, the respondent spent a sum of Rs.2, 09, 459/- towards installing water pipelines and accessories outside the factory premises which were to belong to and be maintained by the municipality. Since it was not disputed that the entire expenditure concerned installations and accessories which came to the ownership of the municipality, the High Court, on a reference held that the expenditure was revenue in nature and deductible in computing the profits of the company. "

The Hon'ble Apex Court upon consideration referred to the decision at the Apex Court in the Empire Jute Co. Ltd. Vs. CIT 124 ITR 1 and held that "if this principles is applied to the facts of the case before us, what we find is that the advantage which was secured by the assessee by making the expenditure in question was the securing of absolution or immunity from liability to pay municipal rates and taxes under normal conditions for a period of fifteen years. If these liabilities had to be paid, the payments would have been- on revenue account and hence the advantage secured was in the field of revenue and not capital. As a result of the expenditure incurred there was no addition to the capital assets of the assessee-company and no change in its capital structure. The pipelines, etc., which might have been regarded as capital assets and which came into 26 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 existence as a result of the expenditure incurred did not belong to the assessee-company but to the municipality. In these circumstances, applying the principles laid down in Empire Jute Co.'s case [1980]124 ITR 1 (SC), the expenditure is clearly liable to be allowed as deductible from the profits under section 10(2)(xv) of the Indian Income Tax Act. In the result, the appeals fails and is dismissed with costs."

Even at the cost of repetition we refer to the following from the Hon'ble Apex Court decision in the case of Empire Jute Company Ltd. Vs. CIT in 124 ITR 1 wherein it was observed that "there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may breakdown. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principles laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. It is advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more effectively or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future."

Now in the instant case before us, we find that expenditure which have been made in the concerned years were paid to the selling agents for sourcing the customers from whom the assessee had generated the income by way of granting of loan finances. The amount paid as commission is not refundable in any circumstances. Undisputedly income in this regard has been accounted for in the current years also.

Under such circumstances, examining the present issue on the anvil of Hon'ble Jurisdictional High Court decision and Hon'ble Apex Court decision cited above, we find that the expenditures on commission and stamping fee have to be allowed in full in the impugned assessment years as deferral of the same over a number of year is not sustainable.

27 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 Under such circumstances, we set aside the orders of the learned CIT(A) and decide the issue in favour of the assessee."

In view of the binding decision of the Hon'ble Tribunal, the assessee deserves to succeed in ground of appeal no.5.

12. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. DR supported the orders of the AO. On the other hand, the ld. ld AR on behalf of the assessee while inviting our attention to an order dated 18th December, 2009 of the ITAT in assessee's own case for the AYs 2001-02 and 2002-03 in I.T.A. nos.4035, 4617/2005 and 2460/2673/2006, upheld by the Hon'ble High Court in their order 30.03.2011 in I.T.A. nos.1820/2010; 1974/2010, 1/2011 and 5/2011 contended that the issue is squarely covered by the said decision. The ld. AR added that SLP filed by the Revenue against the decision dated 30th March, 2011 of the Hon'ble High Court, has been dismissed by the Hon'ble Supreme Court.

13. We have heard both the parties and gone through the facts of the case. Indisputably and as pointed out by the ld. CIT(A) in the impugned orders and the AO in his assessment orders, facts and circumstances in the years under consideration are similar to the facts and circumstances in the AYs 2001-02 & 2002-03.We find that Hon'ble jurisdictional High Court in their aforesaid decision dated 30th March, 2011 while adjudicating a similar issue in the AYs 2001-02 and 2002-03 concluded as under:-

> "15. As per the Assessing Officer, the assessee had been financing the hire purchase of vehicles and homes etc. and the period of such financing were ranging from less than one year to upto 5 years. On such transactions, direct selling expenses, stamping fee and commission paid to the selling agents could not be treated as expense relating to the year in which the transaction took place as the period of financing was normally more than one year. On this premise, the Assessing Officer took the view that these expenses could not be termed as having the chargeability in which they were incurred. He took average of three years for such agreements and spread the expense over a period of three years thereby allowing 1/3rd expenditure 28 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 incurred in that particular year. The matter was taken up in appeal and before the CIT (A), the assessee questioned the aforesaid approach of the Assessing Officer by contending that in the course of its business, the assessee enters in the loan agreements of hire purchase which agreements are required to be stamped in accordance with the provisions of Indian Stamps Act. The stamp duty paid by the assessee is debited to agreement stamping fee under the major head of „rates and taxes and is claimed as revenue expenditure. This entire process of getting stamped the agreements had been outsourced by the

assessee to the Contract Processing Associates (CPA) and who are paid remuneration as well. Therefore, the expense towards stamping as well as commission paid to the agents is debited in whole in the year in which it is incurred and could not be treated as advertisement expense.

16. The CIT (A) was unimpressed with this argument and found that the assessee was spreading over the income during the number of years that the financing is spread over and, therefore, expenditure on the aforesaid counts was required to be spread over. The ITAT, however, denounced this reasoning of the CIT (A) and accepted the plea that the expenditure incurred had nothing to do with the period of length of time and had no linkage, whatsoever, to any period, the entire expenditure was allowable in the year in which it was incurred. The Tribunal has further held that the expenditure is incurred once for all in the form of stamping duty as well as commission paid to the direct selling agents for procuring the loan assignments and it is not dependent upon the working out of the agreements ultimately entered into between the assessee and the customers. Since the commission is paid to the direct selling agents, for their services in sourcing hire in the year in which the loan is disbursed, it is to be allowed as business expenditure. The Tribunal, to arrive at this finding took into consideration the clauses of the agreement relating to mode of payment of consideration as well as termination clause in the agreement. Thus, as the entire expenditure was incurred which admittedly have nexus with the business of the assessee, it was treated as business expenditure allowable under Section 37 of the Act. The Tribunal also relied upon the judgment of Supreme Court in the cases of Calcutta Company Ltd. Vs. CIT, 37 ITR 1, CIT Vs. Associated Cement Companies Ltd, 172 ITR 257, Empire Jute Company Ltd. Vs. CIT, 124 ITR 01 and judgment of this Court in CIT Vs. Salora International Ltd. 308 ITR 199.

29 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010

17. We are in agreement with the aforesaid view taken by the Tribunal and hold that the expenditure was required to be allowed as revenue/business expenditure incurred in that year. The reasons given by us while allowing the advertisement and publicity expenditure will apply here as well."

13.1 In the light of aforesaid view taken by the Hon'ble jurisdictional High Court, especially when the Revenue have not placed before us any material, controverting the aforesaid findings of the ld. CIT(A) so as to enable us to take a different view in the matter nor brought to our notice any contrary decision, we have no hesitation in upholding the findings of the ld. CIT(A). Therefore, ground no.5 in the appeal of the Revenue for the AY 2003-04 and ground no.4 in their appeals for the AYs 2004-05 and 2005-06 are dismissed.

14. Ground no.6 in the appeal of the Revenue for the AY 2003-04 and ground no.5 in their appeals for the AYs 2004-05 and 2005-06 relate to claim of loss on sale of repossessed assets. The AO noticed during the course of assessment proceedings that the assessee claimed loss on sale of

repossessed assets to the tune of ``7,29,73,000/-. To a query by the AO, the assessee explained that the amount was revenue expenditure as the assets repossessed were not their business assets and represented the security held for realization of dues from the borrower. The vehicles/other assets financed by the assessee originated from the business activities of the company and were never capitalized in their books nor depreciation was claimed. Thus, loss incurred was not a capital loss, the assessee submitted. However, the AO did not accept the submissions of the assessee and while relying upon the decision of the Hon'ble Allahabad High Court in the case of Motor and General Sales (P) Ltd. Vs. CIT,226 ITR 137(All.) disallowed the claim for loss on sale of repossessed assets.

14.1 Similarly, the AO disallowed an amount of ``7,37,84,000/- in the AY2004-05 and ``6,04,25,724/- in the AY 2005-06 while relying upon aforesaid decision of Hon'ble Allahabad High Court in Motor and General Sales (P) Ltd. Vs. CIT, 226 ITR 137 (All.).

30 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010

15. On appeal, the ld. CIT(A) allowed the claim of the assessee in the AYs 2003-04 & 2004-05 while relying upon decision of the ITAT in assessee's own case for the AY 2002-03 in the following terms:-

> "19 I have gone through submissions made by the appellant and have examined the details filed before me. The matter is covered in appellant's favour by the decision of Delhi Bench of Hon'ble ITAT in appellant's own case for assessment year 2002-03. Since the nature of expenses incurred is similar to those in assessment year 2002-03 and there is no change in the factual and legal matrix of the case, respectfully following the aforesaid decision of the Hon'ble ITAT, the loss on sale of repossessed assets is to be treated as revenue in nature. Since, the loss on sale of repossessed assets is inextricably linked with the business of the company, the same is allowable u/s 28 of the Act. Moreover as held by Hon'ble ITAT, the loss on sale of repossessed assets written off in the books of accounts is also allowable as bad debts written off u/s 36(1)(vii) of the Act. Therefore, the disallowance of loss made by the Assessing Officer in assessment order, amounting to ``7,29,73,000/- for assessment year 2003-04 and ``7,37,84,000/- for assessment year 2004-05 in this regard are deleted."

15.1 Following the aforesaid decision, the ld. CIT(A) allowed the claim in the AY 2005-06,holding as under:-

> "23. This issue stands decided in favour of the assessee in ACIT Vs. M/s City Core Maruti Fin. Ltd. in I.T.A. No.3749/D/09 for the assessment years 2003-04 and 2004-05. The Hon'ble Delhi Tribunal has at para 6 held as under:-
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> "6. On considering the submissions of both the parties, perusing the orders of the tax authorities below, we are of the opinion that the Assessing Officer while disallowing the claim of the assessee has wrongly placed reliance on the decision of Hon'ble Allahabad High Court in the case of M/s Motor General Sales P. Ltd. (supra) and the

> same has been rightly analysed and distinguished by the CIT(A) in his order. We further find that the CIT(A) in his well reasoned order and relying upon the various decisions which were relevant to the issue under consideration before us has rightly deleted the impugned additions of ``1,56,04,644/- (in assessment year 2003-04) and ``2,00,14,497/- (in assessment year 2004-05) respectively. Accordingly, the well reasoned and well discussed orders of CIT(A) do not call for any interference from our side and the 31 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 same are upheld. Ground Nos.1 and 2 of the appeals of the revenue are rejected."

24. The Delhi Tribunal has already decided on the issue in the assessee's group case file. The arguments as taken by the learned Assessing Officer are the same as that of assessee's own case during the subject year. Thus, the assessee deserves to succeed in ground of appeal No.6. While adjudicating this issue, the learned AR of the assessee had submitted that the case stands decided in favour of the assessee in the assessment year 2002-03, which to my mind is an inadvertent error as I have gone through the order of the Tribunal and the issue was not even a part of ground of appeal. In the final analysis assessee succeeds in ground of appeal No.6."

16. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. DR supported the orders of the AO. On the other hand, the ld. ld AR on behalf of the assessee while inviting our attention to order dated 9th October, 2009 of the ITAT in assessee's own case for the AY 2002-03 , upheld by the Hon'ble High Court in their order 4.03.2011 in I.T.A. no.451/2011 contended that the issue is squarely covered by the said decision. The ld. AR added that SLP no.3125/2011 filed by the Revenue against the decision dated 4th March, 2011 of the Hon'ble High Court, has been dismissed by the Hon'ble Supreme Court vide their order dated 11th November, 2011.

17. We have heard both the parties and gone through the facts of the case. Indisputably and as pointed out by the ld. CIT(A) in the impugned orders and the AO in his assessment orders, facts and circumstances in the years under consideration are similar to the facts and circumstances in the AY 2002-03. We find that a co-ordinate bench in their decision dated 9th October, 2009 in I.T.A. No.1966/D/09 for the AY 2002-03 concluded as under:-

> "12. We have heard the rival submissions and have gone through the material available on record. We find that it has been noted by the learned CIT(A) in para No.3.3 of his order that it was submitted before him that the assessee has claimed an amount of `56,926,000/- on account of loss on sale of repossessed assets as revenue expenditure. It is also noted that it is the claim of the assessee that the claim of the assessee is nothing but bad debts 32 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 incurred by the assessee during the course of its normal business operations. Learned CIT(A) has decided this issue against the assessee on the basis that this loss is related to write off of repossessed assets and is not related to debts as such. We are of the considered opinion that this loss is allowable to the assessee since the loss has been incurred in normal course of business. Repossession of the asset was taken by the assessee in the course of normal

business operations and such repossessed assets were sold and loss incurred in this process is a normal business loss allowable to the assessee. The same is allowable u/s 36(1)(vii) of the Act also as write off of bad debts because when there is loss on sale of repossessed assets, such deficiency is realizable from the customer but since the assessee has written off of the same in the P&L A/c instead of debiting it to the customer account, it is equal to write off of bad debt and by now, it is a settled legal position that after the amendment in section 36(1)(vii) of the Act w.e.f. 1.4.1989, only write off is sufficient and the assessee is not required to show that the debt has become bad. We, therefore, decide this issue in favour of the assessee since we are in agreement with ld. Counsel of the assessee that the judgment of Hon'ble Allahabad High Court followed by the authorities below is not applicable because of change in law as we have noted that section 36(1)(vii) of the Act has been amended w.e.f. 1.4.1989. We, therefore, decide this issue also in favour of the assessee."

17.1 Subsequently, Hon'ble High Court in their order 4.03.2011 in I.T.A. no.451/2011 upheld the aforesaid decision of the ITAT in the light of view taken by the Hon'ble High Court in their decision dated 9.11.2010 in CIT vs.Citicorp Maruti Finanace Ltd in ITA nos. 1712&1714/2010 ,holding that the assessee was entitled to loss on sale of repossessed assets under section 36(1)(vii) read with section 36(2) of the Act.

17.2 In the light of aforesaid view taken by the Hon'ble jurisdictional High Court, especially when the Revenue have not placed before us any material, controverting the aforesaid findings of the ld. CIT(A) so as to enable us to take a different view in the matter nor brought to our notice any contrary decision, we have no hesitation in upholding the findings of the ld. CIT(A). Therefore, ground no.6 in the appeal of the Revenue for the AY 2003-04 and ground no.5 in their appeals for the AYs 2004-05 and 2005-06 are dismissed.

33 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010

18.. Ground no.7 in the appeal of the Revenue for AY 2003-04 and ground no.6 in their appeals for the AYs 2004-05 and 2005-06 relate to disallowance of excess claim of depreciation on computer peripherals. The AO noticed during the course of assessment proceedings for the AY 2003-04 that the assessee claimed depreciation @60% on computer accessories and peripherals like printers, scanners, racks, network cables etc. To a query by the AO, the assessee explained that during the year, the assessee made addition to the extent of ``6,03,90,216/- to the computer/software and claimed depreciation @60% on the computer accessories and peripherals like printers, scanners, racks, network cables etc.. While explaining the term "computers" in the context of item 5 in new Appendix I to the Income-tax Rules, 1962, the assessee submitted that they were entitled to depreciation @60%.However, the AO did not accept the submissions of the assessee on the ground that only the computers and computer software were eligible for depreciation of 60% and the same could not be extended to computer accessories and peripherals. Accordingly, the AO restricted the depreciation @25% against the claim of 60%,resulting in disallowance of ``72,00,478/- in the AY 2003-04.

18.1 Similarly, in the AYs 2004-05 and 2005-06, the AO allowed the depreciation @25% on computer accessories and peripherals as against claim @60%, resulting in disallowance of ``54,51,474/- in the AY 2004-05 and ``2,19,80,723/- in the AY 2005-06.

19. On appeal, the ld. CIT(A) allowed the claim of the assessee in the AYs 2003-04 & 2004-05 as under:-

> "26. I have gone through the appellant's submission and judicial rulings cited by the appellant in this regard. The appellant's case is covered by the decision of Kolkata Bench of Hon'ble Tribunal in the case of Income Tax Officer Vs. Samiran Mazumdar 280 ITR 74. Respectfully following the above decision, the disallowance of expenses made by the Assessing Officer in assessment order, amounting to ``72,00,478/- for assessment year 2003-04 and 34 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 ``54,51,474/- for assessment year 2004-05 in this regard are deleted."

19.1 Following the aforesaid decision, learned CIT(A) allowed the claim in of the assessee in the AY 2005-06 in the following terms:-

> "31 I have considered the order of the learned Assessing Officer and the submissions made by the learned AR of the assessee. The decision has to go in favour of the assessee in view of Delhi High Court decision in CIT Vs. BSES Rajdhani Powers Ltd. in I.T.A. No.1266/2010. This was decided on 31.08.2010. In para 3 & 4 it was held as following:
>
> "However, upon a perusal of the file, we find that the higher rate of depreciation was allowed both by the CIT(A) and the Tribunal. In fact, the Tribunal in its impugned order has observed as under:-
>
> "The issue involved in this appeal is covered by the decision of Coordinate Bench of the Tribunal as discussed below:-
>
> In the case of Income Tax Officer Vs. Samiran Majumdar (2006) 98 ITD 119 (Kol.), ITAT Tata Bench 'B', has taken a view that the printer and scanner are integral part of the computer system and are to be treated as computer for the purposes of allowing higher rate of depreciation, i.e., 60%.
>
> 3.2 The ITAT, Delhi 'F' Bench in the case of Expeditors International (India) (P) Ltd. Vs. learned CIT(A) reported in (2008) 118 TTJ 652 has held that peripherals such as printer, scanners, NT Server, etc. form integral part of the computer and the same, therefore, are eligible for depreciation at the rate of 60% as applicable to a computer.
>
> 4. Respectfully following the aforesaid decisions of the Co ordinate Bench, we uphold the order of learned CIT(A) in allowing the depreciation at 60% on computer

peripherals and accessories, and thus, the ground raised by the revenue is rejected.

5. In the result, the appeal filed by the revenue is dismissed."

35 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010

4. We are in agreement with the view of the Tribunal that computer accessories and peripherals such as, printers, scanners and server etc. form an integral part of the computer system. In fact, the computer accessories and peripherals cannot be used without the computer. Consequently, as they are the part of the computer system, they are entitled to depreciation at the higher rate of 60%."

20. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. DR supported the order of the AO while the ld. AR on behalf of the assessee relied upon the findings of the ld. CIT(A).

21. We have heard both the parties and gone through the facts of the case. We find that the Hon'ble Delhi High Court in the case of CIT v. BSES Rajdhani Powers Ltd. in I.T. Appeal no. 1266 (Delhi) of 2010, in their decision dated 31-8- 2010 while adjudicating a similar issue, held as under:

> "We are in agreement with the view of the Tribunal that computer accessories and peripherals such as, printers, scanners and server etc. form an integral part of the computer system. In fact, the computer accessories and peripherals cannot be used without the computer. Consequently, as they are the part of the computer system, they are entitled to depreciation at the higher rate of 60 per cent."

21.1 Following the said decision, ITAT in ITO vs.v.Omni Globe Information Technologies India (P.) Ltd., 131 ITD 280(Delhi) held that if peripherals such as printers, scanners and servers etc. form integral part of the computer system, UPS will also be an integral part of the computer system, entitled for deduction of depreciation at the rate of 60 per cent. Earlier Kolkata Bench in the case of Income Tax Officer Vs. Samiran Majumdar (2006) 98 ITD 119, held that the printer and scanner are integral part of the computer system and, therefore, entitled to higher rate of depreciation @.60 per cent . A similar view was taken by the Delhi Bench in their decision in the case of Container Corporation of India Ltd. Vs. ACIT(2009) 30 SOT 284 (Delhi) and Expeditors International India (P) Ltd. vs. Addl, CIT ,118 TTJ(Del.) 652 The Mumbai Special Bench in their decision dated July 9, 2010 in DCIT v. Datacraft India Ltd., in ITA 36 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 nos. 7462 & 754/Mum/2007, held that routers and switches are to be included in the block of `Computer' entitled to depreciation at the rate of 60%. In another decision dated 9.11.2010, Hon'ble Delhi High Court in CIT vs. Citycorp Maruti Finance Ltd. in ITA nos. 1712& 1714/2010 followed their own decision in BSES Yamuna Powers Ltd.(supra) and upheld the view of the ITAT, allowing depreciation @60% on computer accessories and peripherals like printers etc. .A similar view was taken in Bonanza Portfolio Ltd.(supra) by the Hon'ble jurisdictional High Court in their decision dated 10.8.2011. In the light of view taken in the aforesaid decisions, especially when the Revenue have not placed before us any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the ld.

CIT(A),allowing depreciation @60% on computer peripherals and accessories. Therefore, ground no.7 in the appeal of the Revenue for the AY 2003-04 and ground no.6 in their appeals for the AYs 2004-05 and 2005-06 are dismissed.

22. Next ground no.3 in the appeal of the Revenue in the AY 2003-04 and ground no.7 in their appeal for the AY 2005-06 relate to expenditure in relation to issue of non convertible debentures and commercial paper. During the course of assessment year proceedings for the AY 2003-04, the AO noticed that the assessee claimed expenditure towards non convertible debentures (NCD) and commercial paper issue expenses of ``2,03,54,103/- in the computation of income even when the same was treated as deferred revenue expenses in the accounts. To a query by the AO, the assessee replied that there is no concept of deferred revenue expenditure under the Act and that the income under business or profession has to be computed as per sections 28 to 43 of the Act. Accordingly, the assessee pleaded that the claim be allowed in full as revenue expenditure. However, the AO did not accept the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs. CIT,225 ITR 802(SC) and allowed only 1/5th of the expenditure, resulting in disallowance of ``1,62,83,282/-.

37 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 22.1 Similarly, in the AY2005-06, the AO allowed only 1/5th expenditure and disallowed an amount of ``2,70,72,940/- out of total claim of ``3.38,41,175/-.

23. On appeal, the assessee contended that the NCD and CP issue expenses included the expenditure towards payment of stamp duty ,payment made to credit rating agencies, underwriters, managers and bankers to the issue. While relying upon the decision of Hon'ble Supreme Court in the case of India Cements Ltd. Vs. CIT, 60 ITR 52 and circular no.56 dated 19.3.1971 issued by the CBDT, it was contended that expenditure is revenue in nature. Inter alia, the assessee relied upon decisions in CIT Vs. East India Hotels, 252 ITR 860 (Cal.); CIT Vs. Mahindra Ugine and Steel Co. Ltd., 250 ITR 84 (Bom),Premier Automobiles Ltd. Vs. CIT 80 ITR 415 (Bom); CIT Vs. OL: 218 CTR 165 (Guj); CIT Vs. South India Corpn. (Agencies) Ltd., 290 ITR 217 (Mad) and CIT Vs. First Leasing Co. of India Ltd., 304 ITR 67 (Mad).It was further pointed out that deferment of issue expenses in the books would not lead to the conclusion that the expenditure is not revenue in nature. In support, the assessee relied upon the decisions in Kedarnath Jute Mfg. Co. Ltd. Vs. CIT (Central)(1971), 82 ITR 363(SC); Sutlej cotton Mills Ltd. Vs. CIT 116 ITR (SC); and CIT Vs. Messrs. Shoorji Vallabhdas and Co. 46 ITR 144.In the light of these submissions, the ld. CIT(A) allowed the claim of the assessee in the AY 2003-04,holding as under:

> "10. I have gone through appellant's submission and judicial rulings cited by the appellant in this regard. The appellant's case is squarely covered by the decision of the Humble Supreme Court in the case of India Cements (supra) and Hon'ble Delhi High Court's decision in the case of Thirani Chemicals. Accordingly, the expenditure on issue of NCD and CP is allowable in full in the year in which the same were incurred and cannot be spread over a number of years. The disallowance made by the Assessing Officer in assessment order amounting to ``1,62,83,282/- for assessment year 2003-04 is, therefore, deleted."

23.1 Similarly, in the AY 2005-06, the ld. CIT(A) allowed the claim in the following terms:

> 38 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 "38. I have gone through the order of the learned Assessing Officer and the submissions made by the learned AR of the assessee. There is no doubt that the non convertible debentures (NCD) and the commercial papers (CP) were loans. In other words, the loan was not an asset and when a company borrows money to such financial instruments the expenses in connection with the borrowings are allowable as revenue expenditure. While it cannot be disputed that the decision in India Cements Ltd. (supra) was rendered in the backdrop of 1922 Act, the expenses if any under any circumstances cannot be taken as an asset which would justify the expenditure as capital in nature. The assessee had merely made use of the provisions of section 78 of the Companies Act. the manner in which entries were made in the books of accounts cannot control or decide the question of allowability of the claim in the I.T. assessment and this position is so well settled that it needs no citings of any authority. Thus, the reliance on expenses relating to the issue of NCDs and CPs would have to be taken as loan which is not an asset. Thus, the expenditure would have to be construed as revenue in nature. The assessee succeeds in ground of appeal No.10 and its part."

24. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. DR supported the orders of the AO while the ld. AR on behalf of the assessee relied upon the findings of the ld. CIT(A).

25. We have heard both the parties and gone through the facts of the case. Indisputably, the aforesaid amount relates to expenditure in connection with the issue of non convertible debentures and commercial paper . The AO treated the same as deferred expenditure while the ld. CIT(A) allowed the claim in the light of decision in India Cements Ltd.(supra). It is well established that the concept of deferred revenue expenditure is essentially an accounting concept and alien to the Act. The relevant provisions of the Act recognise only capital or revenue expenditure. Deferred revenue expenditure denotes expenditure for which a payment has been made or a liability incurred, which is essentially revenue in nature but which for various reasons like quantum and period of expected future benefit etc., is written-off over a period of time e.g. expenditure on advertisement, sales promotion etc.. Though the nature of such expenditure is revenue, keeping in view the fact that the benefits arising therefrom are expected 39 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 to be derived over a period of time, stretching sometimes over several accounting years, the taxpayers have been amortising the same over the expected time period over which the benefits are likely to accrue therefrom. Accordingly, only a proportion of such expenditure is amortised in the Profit and Loss Account but an appropriate adjustment is made in the computation of income, claiming the entire as allowable revenue expenditure in terms of provisions of section 37(1) of the Act. The expenditure which is treated as deferred revenue in the books almost in all cases comprises of items, the benefits derived wherefrom are ephemeral and transitory in nature in as much as these are incurred as a part of a continuous process and need to be expended in order to generate and increase the brand recall and sustain it in the minds of customers. Whether or not expenditure is of enduring nature, the Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. vs. CIT

(1989) 177 ITR 377 has itself observed that "The idea of "once for all" payment and "enduring benefit" are not to be treated as something akin to statutory conditions ; nor are the notions of "capital" or "revenue" a judicial fetish. What is capital expenditure and what is revenue are not eternal verities but must needs be flexible so as to respond to the changing economic realities of business. The expression "asset or advantage of an enduring nature" was evolved to emphasise the element of a sufficient degree of durability appropriate to the context."

25.1. Moreover, the deferred revenue expenditure is essentially revenue in nature and the decision to treat the same as deferred revenue only represents a management decision taken in view of the magnitude of the expenditure involved. For the purpose of allowability of any expenditure under the Act , what is material is the classification between the capital and revenue and the same does not recognise of any concept of deferred revenue expenditure. That is why AO himself allowed the 1/5th of the amount.. In a number of judgments viz. Amar Raja Batteries Ltd. v. ACIT [(2004) 91 ITD 280 (Hyd)], JCIT v. Modi Olivetti Ltd. [(2005)4 SOT 859 (Delhi)], ACIT vs. Medicamen Biotech Ltd. [(2005) 1 SOT 347 (Delhi)],Hero Honda Motors Ltd. v. Joint Commissioner of Income Tax [(2005) 3 SOT 572 (Delhi)];Charak Pharmaceuticals v. JCIT [(2005) 4SOT 393 40 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 (Mumbai)],and ACIT vs. Ashima Syntex Ltd.,117 ITD 1(Ahd.)(SB)it has been affirmed that where any expenditure is treated as a deferred revenue expenditure, it presupposes that the concerned expenditure, creating benefit is in the revenue field and is a revenue expenditure, but considering its enduring benefits as well as the fact that it does not result in the creation of any new asset or advantage of enduring nature in the capital field, the same is required to be treated distinctly from capital expenditure. However, where any identifiable capital asset, tangible or intangible comes into existence as a result of the amount expended, the same will have to be treated as a capital expenditure and depreciation allowable thereon as per the prescribed rules and procedures under the Income-tax Act.

25.2. In the instant case, there is no material before us to infer that the aforesaid expenditure resulted in creation of any capital asset, tangible or intangible, and thus, the question of treating the same as capital expenditure does not arise. In fact, the Hon'ble Supreme Court itself in Madras Industrial Investment Corporation Limited(supra) while discussing the issue, in the said case, and distinguishing between various situations observed that "ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years".

25.3. Another argument by the ld. DR is the variation and dichotomy between the accounting treatment of such expenditure in the books of account and its claim under the Act. As far as the entries in the books of account are concerned, it is well settled that they do not clinch the issue either way, and are not determinative of the allowability or otherwise of the expenditure. The decisions of the Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 and in the case of CIT v. Indian Discounts Co. Ltd. [1970] 75 ITR 191 (SC) are clear on the issue. The accounting entries in the books of accounts are occasioned by a diverse set of considerations and issues such as 41 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 compliance with statutory laws and mandatory accounting standards/principles and of course

management decisions as to the treatment of a particular item which can be guided by considerations of reported profitability earning per share, impact on share prices etc.. The Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. vs. CIT ((1971) 82 ITR 363) (SC) also affirmed the above view by observing that "whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter".

25.4. Subsequently the Hon'ble Court re-affirmed the said view in Sutlej Cotton Mills. Ltd. Vs. CIT,116 ITR1(SC) " But it is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee. "

> 25.5. Likewise, in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd vs. CIT,227 ITR 172(SC),Hon'ble Supreme Court held that "It is true that this court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override section 56 or any other provision of the Act as was pointed out by Lord Russell in the case of B. S. C. Footwear Ltd. [1970] 77 ITR 857, 860 (CA), the income tax law does not march step by step in the footprints of the accountancy profession."

25.6. In a later decision in CIT vs Secure Meters Ltd., (2009 TIOL

93)(SC),Hon'ble Apex court taking note of their earlier decision in India Cements 42 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 Ltd.(supra) held that expenditure on loan was allowable as revenue expenditure. The Revenue in this case contended that since the debentures were convertible and on conversion, it would add to the capital of the company, the expenditure should also be construed as capital expenditure. The Hon'ble Supreme Court rejected this contention and held that the debentures were loans and the object of a loan was not relevant. Accordingly, it was concluded that expenses on issue of debentures, whether convertible or not, is allowable as a deduction in computing the income of the assessee.

25.7 In view of the foregoing, especially when the Revenue have not brought to our notice any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the ld. CIT(A). Therefore, ground no.3 in the appeal of the Revenue for the AY 2003-04 and ground no.7 in their appeal for the AY 2005-06 are dismissed.

26. Ground no.4 in the appeal of the Revenue for the AY 2003-04 and ground no.3 in their appeals for the AYs 2004-05 and 2005-06 relate to expenditure incurred in connection with advancing of loan to customers. The AO, during the course of assessment proceedings for the AY 2003-04, noticed that the assessee company claimed loan acquisition cost of ``13,03,15,460/- as revenue expenditure and changed the accounting policy for accounting of loan acquisition fee and claimed the same on amortization basis. Total loan acquisition cost incurred during the year was ``13,03,15,460/- and amount shown in the profit and loss account was ``7,44,16,728/- whereas in the computation of income , the assessee claimed entire loan acquisition cost as deductible expenses. To a query by the AO, the assessee explained that in course of its money lending business, the assessee entered into loan agreements and hire purchase agreements with its customers and incurred cost such as credit verification of the borrower, front end processing fee etc.. These costs were booked as loan acquisition costs and were recognized as expenses over the tenor of the loan by applying the Internal Rate of return (IRR), implicit in 43 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 the agreement on the diminishing balance of the financed amount so as to provide a constant periodic rate of return on the net investment outstanding on the contract. However, in case, the loan was foreclosed, the unamortized portion of the loan acquisition cost, being disclosed as part of loans and advances, was recognized as charge to the profit and loss account at the time of foreclosure. However, w.e.f April, 2002, the assessee company changed its policy for accounting of loan acquisition costs. The loan acquisition costs were earlier charged to the profit and loss account as and when incurred. In the year under consideration, in accordance with the changed accounting policy , the company amortized a part of the loan acquisition cost incurred during the year while the unamortized portion of ``55,899/- thousands was shown under loans and advances in the schedule 10 of the financials. However, in the return, the assessee claimed an amount of ``55,898,732/- being the unamortized amount of the loan acquisition fee actually incurred during the year, a practice of claiming the loan acquisition cost on actual basis being consistently followed by the assessee over the years and never questioned by the department, the assessee clarified. However, the AO did not accept the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs. CIT,225 ITR 802(SC) and allowed only 1/3rd of the expenditure and disallowed an amount of `8,68,76,973/-.

26.1 Similarly, the AO allowed only 1/3rd expenditure and disallowed ``11,38,85,144/- out of total of ``17,08,28,717/- in the AY 2004-05 and allowed only ``14,33,75,323/- and disallowed remaining ``28,67,50,647/- out of total expenditure of ``43,01,25,970/- in the AY 2005-06.

27. On appeal, the ld. CIT(A) allowed the claim of the assessee in the AYs 2003-04 and 2004-05,holding as under:

> "12. I have gone through the submissions given by the appellant and have examined the matter in details. The appellant has deferred both loan acquisition costs and loan processing fees in the books of accounts because of the accounting policy followed by the 44 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 appellant. However for tax purposes, it has offered loan processing fees (Income) for tax and has claimed loan acquisition costs as expense in the year of accrual. The Assessing Officer has

> accepted the taxation of loan processing fees as income on upfront basis but at the same time has allowed loan acquisition costs on a deferred basis over a period of three years. This treatment by Assessing Officer is inconsistent. The Assessing Officer cannot take a different stand relating to income and expenditure on the same issue. It is also a well settled principle that treatment in books of accounts does not govern the tax treatment as the same is governed by the provisions of the Income-tax Act. Accordingly, loan acquisition costs are allowable in full in the year in which the same were incurred and cannot be spread over number of years. The disallowance made by the Assessing Officer in assessment orders amounting to ``8,68,76,973/- for assessment year 2003-04 and ``11,38,85,144/- for assessment year 2004-05 are, accordingly, deleted."

27.1 Following the view in the aforesaid decision, the ld. CIT(A) allowed the claim for the AY 2005-06in the following terms:

> "16. Judicial precedents demands that the order of my ld. Predecessor has to be followed by me unless there is change in facts or in position of law. I do not see any change in facts or in law. Thus, decision in ground of appeal No.4 and its part would have to go to the assessee. While, dissecting this ground of appeal, I observe that the assessee has been taking the stand that in assessment year 2001-02 and 2002-03, the ITAT has issued an order in its favour. On a close perusal of the said order, I do not see any such adjudication. In any case, I have already decided in favour of the assessee in ground of appeal No.4 and its parts."

28. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. DR relied on the order of the AO while the ld. AR on behalf of the assessee supported the findings of the ld. CIT(A) .

29. We have heard both the parties and gone through the facts of the case. Indisputably, the assessee offered loan processing fees (Income) for tax and claimed loan acquisition costs as expense in the year of accrual in accordance with, a practice being consistently followed by the assessee over the years and never questioned by the Revenue. However, the AO did not accept 45 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited(supra) . On appeal , the ld. CIT(A) allowed the claim on the ground that the AO could not take a different stand relating to income and expenditure on the same issue and the treatment in books of accounts does not govern the tax treatment ,which is governed by the provisions of the Act. As already observed by us in para 25 to 25.7 while adjudicating ground no.3 in the appeal of the Revenue for the AY 2003-04 and ground no.7 in their appeal for the AY 2005-06 ,the concept of deferred revenue expenditure is essentially an accounting concept and alien to the Act. The relevant provisions of the Act recognise only capital or revenue expenditure. Indisputably, the amount claimed by the assesee in these three assessment years is revenue in nature. Deferred revenue expenditure denotes expenditure for which a payment has been made or a liability incurred, which is essentially revenue in nature but which for various reasons like quantum and period of expected

future benefit etc., is written-off over a period of time e.g. expenditure on advertisement, sales promotion etc.. There is no material before us to infer that the aforesaid expenditure resulted in creation of any capital asset, tangible or intangible, and thus, the question of treating the same as capital expenditure does not arise. In fact, the Hon'ble Supreme Court itself in Madras Industrial Investment Corporation Limited(supra) while discussing the issue, in the said case, and distinguishing between various situations observed that "ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years".

29.1. In view of detailed reasons given in para 25 to 25.7 above, especially when the Revenue have not brought to our notice any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the ld. CIT(A). Therefore, ground no. 4 46 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 in the appeal of the Revenue for the AY 2003-04 and ground no.3 in their appeals for the AYs 2004-05 and 2005-06, are dismissed.

30. Now coming to ground no.1 in the appeal of the assessee for the AY 2003-04 relating to payment of ``5 crores to Kinetic Finance Limited[KFL in short], during the course of assessment proceedings, the AO noticed that the assessee paid an amount of ``5 crores to the KFL for getting excess to database of KFL and use of infrastructure to enable the assessee to use database for sale activities. To a query by the AO, the assessee replied that Kinetic Finance Ltd. (KFL), a Kinetic group company, financing two wheelers manufactured by other group companies, entered into an arrangement in November 2002 whereby amongst others, the assessee was given access to the database of KFL and allowed the use of infrastructure. The two entities also agreed to put together an entity that may undertake a part of losses on account of loans to customers of KFL. Since the existing database provided by KFL included the names, address and telephone numbers as well as credit history etc.,this access to database provided a business opportunity, which certainly increased the finance activities of the assessee tremendously. The number of loan cases (pertaining to the Kinetic two wheelers) increased from 1,480 in financial year 2002-03 to 11,272 in financial year 2003-04. In pursuance to the aforesaid arrangement, the assessee did not acquire the infrastructure of KFL, only got a right to use the infrastructure, the assessee submitted. However, the AO did not accept the submissions of the assessee on the ground that the access to the database of KFL provided a good opportunity to the assessee company, which is of enduring benefit to the assessee company and therefore capital in nature. Accordingly, the AO disallowed the amount of ```5 crores.

31 On appeal, the ld. CIT(A) upheld the disallowance made by the AO, in the following terms:

> "16. I have gone through the submissions made by the appellant and the reasons given by the Assessing Officer in the assessment order for treating the expenditure as capital in nature. In this case, I 47 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 find that the appellant has paid ``5,00,00,000/- to KFL to get access to database of KFL and for right to use the infrastructure of KFL for the expansion of its business. The issue whether the nature of expenditure is revenue

> or capital is a question of both facts and law. It is settled law that if the expenditure results in bringing into existence a new asset or advantage of enduring nature, the same is to be treated as capital expenditure. In the facts and circumstances of the instant case, I find that the expenditure incurred by the appellant would result in providing the appellant a new and added advantage for the purpose of expansion of its business activities. It is not in doubt that the said advantage is of an enduring future which will provide benefits to the appellant to acquire new clients and expand its business by using the database and infrastructure of KFL. Therefore, the same has to be treated as capital expenditure. This view has been supported by the Hon'ble SC in the case of CIT Vs. Ashok Leyland Ltd. (1972) 86 ITR 549, 553 wherein the Hon'ble Court held that:
>
> "A long line of decisions have laid down that when an expenditure is made with a view to bringing into existence an asset or advantage for the enduring benefit of a trade, there is good reason (in the absence of special circumstances leading to the opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

Similar view was also taken in the following judicial rulings;

Hylam Ltd. Vs. CIT (1973) 87 ITR 310, 326-7 (AP) Benaridas Jagannath (1947) 15 ITR 185, 198-9 (Lahore High Court Assam Bengal Cement Co. Ltd. Vs. CIT (1955) 27 ITR 34,45 (Supreme Court) Atherton Vs. British Insulated & Helsby Cables Ltd. (1925) 10 TC 155 (HL) Therefore, the said expenditure is treated as capital in nature and the impugned disallowance of ``5,00,00,000/- for assessment year 2003-04 is sustained."

32 The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. AR on behalf of the assessee submitted that the lumpsum payment was not to acquire any right or asset, tangible or otherwise, but was only to gain an advantage for the conduct of its business. While relying 48 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 upon decisions in CIT Vs. Empire Jute Co,124 ITR 1 (SC);CIT Vs. Associated Cement Companies Ltd., 172 ITR 257 (S.C.);Wipro GE Medical System Vs. DCIT ,81 TTJ 455;Alembic Chemical Works Co. Ltd. Vs. CIT,177 ITR 377 (1989) (SC);CIT Vs. Chandulal Keshavlal & Co. (1960) (38 ITR 601) (SC); CIT Vs. Majestic Auto Ltd. (I.T.A. No.109 of 2008) (P& H);IBM Global Services India (P) Ltd. Vs. DCIT 316 ITR(AT) 364 (Bangalore);CIT Vs. J.K. Synthetics Ltd., 309 ITR 371 (Delhi);CIT Vs. Sharda Motor Industrial Ltd.,319 ITR 377 (Delhi);Climate Systems India Ltd. Vs. CIT, 319 ITR 113 (Delhi);CIT Vs. Gas Securities System India (P) Ltd. in I.T.A. No.1943/2010, 763/2011 and 765/2011,(Delhi);CIT Vs. Sierra Industrial Enterprises (P) Ltd. (I.T.A. No.844/2010) (Delhi);CIT Vs. Denso Haryana Pvt. Ltd, 190 Taxman 389 (Delhi), the ld. AR submitted that as a result of the arrangement, the assessee was able to reach out to more customers and consequently, increase its Revenue .What the assessee gained is only business and commercial advantage in its trading operations which enables the assessee to carry on operations more efficiently and profitably. Thus , the expenditure was revenue in nature, the amount having been paid for gaining business opportunity.

33. On the other hand, the ld. DR supported the findings of the ld. CIT(A).

34. We have heard both the parties and gone through the facts of the case. We find that in the paper book, the assessee placed a copy of agreement entered in to on 8.11.2002[pg. 51 to 96 of PB]. The impugned order as also the assessment order is silent with regard to terms and conditions envisaged in the agreement. In terms of this Master SPV Agreement entered in to on 8th day of November, 2002 between the assessee and M/s Kinetic Engineering Ltd.; Kinetic Motor Company Ltd.;& Kinetic Finance Ltd. , it was agreed to establish a Special Purpose Vehicle ('SPV') in order to set out an arrangement to provide convenient financing arrangements for customers of the Kinetic Groups two wheelers, for KFC to leverage their existing infrastructure, including for other products and for AIFS to leverage off the distribution strengths of the Group. It was provided that SPV would structurally provide a mechanism for the above and 49 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 also absorb credit losses due to defaults made by borrowers who have taken loans for purpose of two wheeler vehicles, under this arrangement. The aforesaid amount of `5 crores disallowed by the AO was ,in fact, payment of consideration in terms of clause 9.1 of the agreement, which reads as under;

"V Payment of consideration In lieu of the business opportunity and access to infrastructure provided by KFL to AIFS, AIFS agrees to pay KFL a premium by way of consideration of `50,000,000 (INR fifty million only) before incorporation of the SPV. The group undertakes to invest this amount on receipt by KFL as part of the capital contribution into the SPV on its incorporation in the manner described in 9.2 and 10.2 below."

34.1 As is apparent from the impugned order, the AO while referring only to submissions of the assessee disallowed the amount on the ground that the payments made for getting access to the database of KFL: and right to use their infrastructure, brought enduring benefit to the assessee and is, thus capital in nature. On appeal, the ld. CIT(A),without even referring to various terms and conditions of the aforesaid agreement and the purpose of payment of consideration for establishing a SPV, upheld the findings of the ld. CIT(A). The ld. CIT(A) did not even attempt to analyse the various terms and conditions of the agreement nor cared to ascertain as to how the premium paid by way of consideration of `5 crores before incorporation of SPV, actually benefited the assessee and nor even analysed the claim of the assessee in the light of various decisions relied upon by them. The ld. CIT(A) did not even whisper in the impugned order as to the benefits claimed by the assessee in their written submissions filed before him and whether these actually materialized. A mere glance at the impugned order reveals that the order passed by the ld. CIT(A) is cryptic and grossly violative of one of the facets of the rules of natural justice, namely, that every judicial/quasi-judicial 50 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 body/authority must pass reasoned order, which should reflect application of mind by the concerned authority to the issues/points raised before it. The application of mind to the material facts and the arguments should manifest itself in the order. Section 250(6) of the Act mandates that the order of the CIT(A) while disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. The requirement of recording of reasons and communication thereof by the quasi-judicial authorities has been read as an integral part of the concept of fair procedure and is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the

introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision-making process. Hon'ble jurisdictional High Court in their decision in Vodafone Essar Ltd. Vs. DRP,196 Taxman423(Delhi) held that when a quasi judicial authority deals with a lis, it is obligatory on its part to ascribe cogent and germane reasons as the same is the heart and soul of the matter and further, the same also facilitates appreciation when the order is called in question before the superior forum. W e may point out that a 'decision' does not merely mean the 'conclusion'. It embraces within its fold the reasons forming basis for the conclusion.[Mukhtiar Singh Vs. State of Punjab,(1995)1SCC 760(SC)].

34.2. In the instant case before us, as is evident from the aforecited facts, the ld. CIT(A) upheld the disallowance, without even analyzing the terms and conditions of the agreement ,under which payment is claimed to have been made and without any examination as to how the assessee benefited in the existing business or establishment of SPV was a new source of income. In these circumstances, we consider it fair and appropriate to set aside the order of the ld. CIT(A) and restore the matter to his file for deciding the claim of deduction of aforesaid amount of `5 crores mentioned in ground no. 1 in the appeal of the 51 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 assessee, afresh in accordance with law in the light of our aforesaid observations and various judicial pronouncements, including those referred to above, after allowing sufficient opportunity to both the parties. Needless to say that while redeciding the issue, the learned CIT(A) shall pass a speaking order, keeping in mind, inter alia, the mandate of provisions of sec. 250(6) of the Act, bringing out clearly as to whether or not the said amount of premium of `5 crores in terms of an agreement for establishment of a SPV, is revenue or capital in nature. With these observations, ground no. 1 in the appeal of the assessee for the AY 2003- 04 is disposed of.

35.. Ground No.2 in the appeal of the assessee for the AY 2003-04 assessment year 2003-04 & ground no.1 in their appeals for the AY 2004-05 & 2005-06 relates to disallowance of expenditure in respect of realignment expenses. During the course of assessment proceedings for the AY 2003-04, the AO noticed that the assessee made a provision of `3.16 crores for realignment expenses and added back in the computation of income for the AY 2002-03. Out of the provision so made, the assessee reversed an amount of ``76,79,778/- in the AY 2003-04 and incurred actual expenses of `29,76,461. To a query by the AO, the assessee replied vide their letter dated 30.01.2006 that the realignment expenses, represented expenditure incurred on the re-branding exercise of the assessee, for the purpose of complying with the security systems and other parameters such as fire systems, working environment etc. as prescribed by the City Group and were, thus, allowable u/s 37 (1) of the Act as revenue expenditure. However, the AO did not accept the submissions of the assessee on the ground that expenses incurred on the rebranding exercise carried out by the assessee company is not a recurring exercise and provide enduring advantage to the assessee company .Accordingly, the AO disallowed the aforesaid amount of ``29,76,461/-,trating the same capitalin nature 35.1 For similar reasons, the AO disallowed an amount of `1,05,94,000/- in the AY 2004-05 & `1,04,03,761/- in the AY 2005-06.

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36. On appeal, the ld. CIT(A) upheld the disallowance in the AYs 2003-04 & 2004-05,in the following terms;

> ""21. I have gone through the submissions made by the appellant in this regard. In my view, the aforesaid expenditure incurred by the appellant has resulted in the creation of brand name of the appellant company and making it part of the global brand of Citygroup. There is no doubt that this exercise of rebranding from "Associates India Finance Services Ltd." and again aligning the same to the security system and other parameters of Citygroup and use of the logo of Citygroup in the appellant company's advertisements has created a new and added advantage and enduring benefit to the appellant company for expanding its business and that such benefit will accrue to the appellant company for a number of years. It is settled law that any expenditure resulting in bringing into existence any new or added advantage of enduring nature would pertain to the domain of capital expenditure. This view has been supported by the Hon'ble Supreme Court in the case of CIT Vs. Ashok Leyland Ltd. (1972) 86 ITR 549, 553 (supra) and also approved by a large number of judicial decisions viz. Hylam Ltd. Vs. CIT (1973) 87 ITR 310, 326-7 (AP), Benaridas Jagannath (1947) 15 ITR 185, 198-9 (Lahore High Court), Assam Bengal Cement Co. Ltd. Vs. CIT (1955) 27 ITR 34, 45 (S.C.) and Atherton Vs. British insulated & Helsby Cables Ltd (1925) 10 TC 155 (HL). Considering the above, the disallowance of ``29,76,461/- in assessment year 2003-04 and ``1,05,94,000/- in assessment year 2004-05 is sustained.
>
> The appellant has alternatively argued that if the aforesaid expenditure is treated as capital in nature, depreciation u/s 32 at the rate of 25% applicable to tangible assets should allowed to the applicant. On consideration of the matter, I find that the expenditure is in the nature of intangible assets as prescribed u/s 32 and consequently depreciation at the rate of 25 per cent is allowed to the appellant."

36.1 In the AY 2005-06, though the assessee claimed that issue is covered by the decision of the ITAT in the AYs 2001-02 & 2002-03,the ld. CIT(A) while referring to decision of the Hon'ble jurisdictional High Court in CIT vs. JK Synthetics Ltd.,222 CTR(Del.) 339 concluded that by incurring the aforesaid expenditure , the assesse has built for itself a brand image and that of the Citi group and thus, expenditure is capital in nature.

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37. The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. AR on behalf of the assessee submitted that the assessee, a non banking finance company (NBFC), was incorporated on 1st May, 1997 in the name and style of Avco Financial Services India Private Ltd.. The name of the company was changed from 22.7.1999 to Associates India Financial Services Ltd. and again to CitiFinancial Consumer Finance India Ltd. w.e.f. 15th March, 2004. Out of provision of `3,16,54,000/- towards advertisement and publicity under the head realignment expenses in consequence of change in name on 22.7.1999,an amount of `29,76,461/- was actually

incurred in the year under consideration and claimed as deduction in the computation of income..An amount of `76,79,778/- was reversed and credited to profit and loss account under the head 'miscellaneous income' and also claimed as deduction in the computation of income. Accordingly, provision of ``3,16,54,000/- was reduced by ``29,76,461/- and ``76,79,778/- and the balance provision of `2,09,97,761/- was carried forward to next year. Thus, the AO allowed the claim of ``76,79,778/- by assuming the said sum is the expenditure incurred and is ,thus, allowable, without appreciating that the said sum of ``76,79,778/- was since shown as income and was out of the provision made, which provision was not claimed as a deduction. In fact, effectively, a deduction only of ``29,76,461/- was claimed which represented actual expenditure incurred, whereas the AO, when he allowed the claim as per the computation of income assumed that a deduction of `76,79,778/- has been allowed without appreciating that in fact, such sum represented only the amount which was included in the profit and loss account and was out of provision made and this provision had not been either claimed as a deduction or allowed as a deduction. Similarly for the AY 2004-05, an amount actually incurred was `.1,05,94,000 which was claimed as a deduction in the said assessment year and the balance provision of Rs.1,04,03,761 was carried forward to next year. In AY 2005-06, no actual disbursements was made and only the balance provision was reversed which was credited to the Profit and Loss Account. Accordingly, the assessee claimed a deduction of the same in the computation of income reducing the provision balance to zero. While relying 54 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 upon decision in of DCIT vs. Core Healthcare Ltd.,308 ITR 263(Guj), it was further submitted that aforesaid expenditure had been incurred by the assessee towards the advertisement to create the corporate image of the assessee on account of the change in the name of the assessee company and as such same is allowable as revenue expenditure. Inter alia, the ld. AR relied upon decisions in CIT vs. Berger Paints (India) Ltd. reported in 254 ITR 503,CIT v. Salora International Ltd 308 ITR 199,CIT vs. Indian Visit Com Pvt. Ltd.,176 Taxman 164;CIT vs. M/s Liberty Group Marketing Division, Karnal,173 Taxman 439.

38. On the other hand, learned DR while carrying us through the impugned order contended that the expenditure incurred for brand building is capital in nature . The assessee having not explained as to why this expenditure was debited under a separate head, the ld. CIT(A) rightly upheld the disallowance, the ld. DR added.

39. We have heard both the parties and gone through the facts of the case as also the decisions relied upon by the ld. AR. Indisputably, the expenditure termed as realignment expenses was incurred on advertisement and publicity, on change of name of the company. The AO disallowed the amount ,treating the same as capital in nature, expenditure on brand building having brought enduring benefit to the assessee. The ld. CIT(A) upheld the findings of the AO. The nature of expenditure as explained before us is on advertisement and publicity like hoardings,glow sign boards etc.. The plea of the ld. DR that these expenses have been debited under a separate head ,is baseless, since entries in the books of account are irrelevant for determining as to whether the expenditure is revenue or capital in nature .It is well settled that they do not clinch the issue either way, and are not determinative of the allowability or otherwise of the expenditure. The decisions of the Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 and in the case of CIT v. Indian Discounts Co. Ltd. [1970] 75 ITR 191 (SC) are clear on the issue. The accounting entries in the books of accounts are occasioned by a diverse set of 55 ITA nos.3144&3145,5514

&5191,2687&2688/Del./2010 considerations and issues such as compliance with statutory laws and mandatory accounting standards/principles and of course management decisions as to the treatment of a particular item which can be guided by considerations of reported profitability earning per share, impact on share prices etc.. Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. vs. CIT ((1971) 82 ITR 363) (SC) also affirmed the above view by observing that "whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter".

39.1. Subsequently the Hon'ble Court re-affirmed the said view in Sutlej Cotton Mills. Ltd. Vs. CIT,116 ITR1(SC) & Tuticorin Alkali Chemicals and Fertilizers Ltd vs. CIT,227 ITR 172(SC).

39.2 Now whether or not expenditure is of enduring nature, the Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. vs. CIT (1989) 177 ITR 377 has itself observed that "The idea of "once for all" payment and "enduring benefit" are not to be treated as something akin to statutory conditions ; nor are the notions of "capital" or "revenue" a judicial fetish. What is capital expenditure and what is revenue are not eternal verities but must needs be flexible so as to respond to the changing economic realities of business. The expression "asset or advantage of an enduring nature" was evolved to emphasise the element of a sufficient degree of durability appropriate to the context."

39.3 The test of enduring benefit is not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case, as observed by the Hon'ble Apex Court in Empire Jute Co. Ltd. vs. CIT,124 ITR1(SC).Thus, such expenditure has to be allowed in its entirety in the year in which it was incurred, if it is revenue expenditure, and if it is wholly and exclusively incurred for the purposes of business. In the case under consideration, there is nothing to suggest that with the aforesaid expenditure, any asset, tangible or intangible, has been created. There is no 56 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 evidence on record regarding accrual of any specific revenue in the years under consideration or subsequently over a defined period with the incurring of said expenditure..In Core Healthcare Ltd (supra), Hon'ble Gujrat High Court while adjudicating an issue as to whether advertisement expenses incurred by the assessee to create brand image is allowable, concluded as under:

> "In relation to the first item, namely, advertisement expenses, it is not in dispute that the expenditure of Rs. 70 lakhs and odd was incurred on a special advertisement campaign. However, that by itself would not be sufficient to determine as to whether the expenditure in question is on revenue account or capital account. The approach of the Commissioner (Appeals) that the expenditure in question was treated as deferred revenue expenditure and hence was capital in nature, cannot be termed to be a correct approach because in so far as the Income-tax Act is concerned, there is no such category of deferred revenue expenditure. Similarly, making of an entry or absence of an entry does not determine the allowability or otherwise of the item of expenditure and the same cannot be considered to be a factor adverse, if the

expenditure is otherwise of allowable nature. Every expenditure incurred by a business concern, if incurred for the purposes of business, is bound to result in some benefit, direct or indirect, immediate or after some time, but the benefit to the business cannot be termed capital or revenue only on the basis of the period for which the benefit is derived by the business. Any benefit resulting to a business need not be confined to the year of expenditure and this is an ordinary incident of a running business. In the case before the Allahabad High Court in Hindustan Commercial Bank Ltd., In re [1952] 21 ITR 353, the expenditure on advertisement had been incurred at the point of time when new branches of the bank had to be opened and inaugurated. It has been held by the Allahabad High Court that there is no proposition that the amount spent in a special campaign of advertisement must necessarily be capital expenditure.

The apex court decisions on which reliance has been placed by the Tribunal, namely, Empire Jute Co. Ltd. [1980] 124 ITR 1 (SC) and Alembic Chemical Works Co. Ltd. [1989] 177 ITR 377 (SC) specifically lay down that the nature of advantage has to be considered in a commercial sense and the test of enduring benefit is not a certain or conclusive test and cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. The expression "asset or advantage of an enduring nature" has been evolved to emphasise the element of a sufficient degree of durability appropriate to the context. The idea of once for all payment and enduring benefit are not to be treated as something akin to statutory conditions.

Applying the aforesaid settled legal position to the facts of the case, it is not possible to agree with the appellant-Revenue that the advertisement expenses incurred by the respondent-assessee at the time of installation of additional

57 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 machinery in the existing line of business resulted in any enduring benefit, so as to be treated as capital in nature."

39.4 Likewise in Salora International Ltd(supra),Hon'ble jurisdictional High Court held as under

" The first issue that is sought to be raised in this appeal pertains to advertising expenditure of approximately Rs. 3.08 crores. According to the Assessing Officer, the expenditure were incurred for launching of its products. The Assessing Officer was of the view that such expenditure was of an enduring nature and, therefore, treated one-third as "capital expenditure" and only allowed the two-thirds of the said amount as "expenditure, to the assessee". The Commissioner of Income-tax (Appeals) allowed the entire amount after treating the expenditure as "revenue expenditure". The findings of the Commissioner of Income-tax (Appeals) were confirmed by the Income-tax Appellate Tribunal by virtue of the impugned order. Particularly, the Tribunal held that there was a direct nexus between the advertising expenditure and the business of the assessee and that the assessee had to incur such expenditure to meet the competition in the Indian market for selling its products in India. A finding

was returned that unless the assessee made its products known to the market, its business would suffer. Consequently, the Tribunal held the entire expenditure on advertising to be of a revenue nature and allowed the same. The Tribunal also noted the decision of the Supreme Court in the case of Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 wherein the Supreme Court held that there could be cases where the expenditure even if it was incurred for obtaining of a benefit of an enduring nature may, nevertheless, be on the revenue account and, in such cases, the test of "enduring benefit" may break down.

We are of the view that the decision of the Tribunal on this aspect of the matter does not call for any interference and, therefore, no substantial question of law arises on this aspect."

39.5 In Indian Visit.com (P) Limited(supra),expenditure on website in travel business was held to be revenue in nature while in Liberty Group Marketing Division(supra) expenditure incurred on Glow Sign Boards was held to be revenue nature.

39.6 In the light of view taken in the aforesaid decisions, we are of the opinion that actual expenditure incurred on advertisement and publicity by the assessee during the years under consideration is admissible as revenue expenditure. In 58 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 view thereof, ground no.2 in the appeal of the assessee for the AY 2003-04 and ground no.1 in their appeals for the AYs 2004-05 & 2005-06 are allowed.

40. Ground no. 3 in the appeal of the assessee for the AY 2003-04 & ground no.2 in their appeals for the AY 2004-05 & 2005-06, being general in nature nor any submissions having been made before us on these grounds, do not require any separate adjudication while no additional ground having been raised before us in terms of residuary ground no.8 in the appeals of the Revenue for the AY 2003-04 & 2005-06 as also residuary ground no. 7 in their appeal the AY 2004- 05 & residuary grounds in the appeals of the assessee for the AYs 2003-04 to 2005-06,accordingly,all these grounds are dismissed.

41. No other plea or argument was made before us.

42. In the result , appeal of the assessee for the AY 2003-04 is partly allowed, but for statistical purposes while their appeals for the AYs 2004-05 & 2005-06 are allowed and all the three appeals of the Revenue are dismissed.

Order pronounced in open Court

Sd/-	Sd/-
(R.P. TOLANI)	(A.N. PAHUJA)
(Judicial Member)	(Accountant Member)

Copy of the Order forwarded to:-

1. M/s City Financial Consumer Finance India Ltd., 3 Local Shopping Centre, Pushp Vihar, New Delhi

2. Deputy Commissioner of Income-tax, Circle 3(1), New Delhi

3. CIT concerned. .

4. CIT(A)-IV &XVIII, New Delhi

5. DR, ITAT,'B' Bench, New Delhi

6. Guard File.

BY ORDER, Deputy/Asstt.Registrar ITAT, Delhi