Commissioner Of Income Tax vs Casio India Ltd. on 10 May, 2011

Author: A.K.Sikri

Bench: A.K. Sikri, M.L. Mehta

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA No.10 of 2011

% Decision Delivered On: May 10, 2011

COMMISSIONER OF INCOME TAX . . . APPELLANT

through : Ms. P.L. Bansal, Sr. Advocate with Mr. Deepak Anand, Advocate.

VERSUS

CASIO INDIA LTD. . . .RESPONDENT

through: Dr. Rakesh Gupta with Ms. Rani Kiyala, Advocates.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?

3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The respondent assessee filed the return for the Assessment Year 1998-99 declaring loss at `70.21 lacs. During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee had incurred expenditure of `4,18,04,467/- on advertisement and sales promotion which included a sum of `90,522/- and of `2,06,29,188/- towards distribution of musical instrument and digital diaries as sales promotion. The AO observed that in this very year, the assessee had spent exceptionally high amount which was basically to buildup "Casio" brand in India. Since in the preceding year, amount

of `2.70 Crores was allowed to the assessee, in the present year also the AO allowed the same and disallowed balance amount of Rs.1,48,04,467/- to be allowed in subsequent three years as deferred revenue expenditure holding that the same had brought enduring advantage to the assessee in view of judgment of Supreme Court in 225 ITR 502.

2. The CIT (A) allowed the entire expenditure to the assessee holding that the AO had not doubted the veracity of the expenditure, he had artificially divided the same into two parts, out of which `2.70 Cores were allowed during the year and `1.48 Crores was disallowed classifying the same as deferred revenue expenditure. Since there is no concept of Deferred Revenue Expenditure (DRE) in the Income Tax Act (hereinafter referred to as „the Act) in respect of such expenses, in the opinion of the CIT (A), the entire expenditure deserved to be allowed as revenue expenditure.

3. The Income Tax Appellate Tribunal (hereinafter referred to as „the Tribunal) confirmed the order passed by the CIT (A) and allowed the entire claim made by the assessee of `4.18 Crores towards advertisement and sales promotion as revenue expenditure holding that the finding recorded by the CIT (A) had not been controverted by the Revenue. The Tribunal observed that none of the part of expenditure had been identified by the AO as capital in nature and therefore, the entire claim made by the assessee has to be allowed.

4. Challenging this order, the instant appeal is preferred by the Revenue under Section 260A of the Act. Having regard to the facts narrated above, we are of the opinion that no question of law arises in this case. According to the Revenue, the expenditure on account of advertisement and sale promotion is capital and not revenue in nature. Such an expenditure on account of advertisement and sale promotion by this Court is held to be revenue in nature by answering this question in batch of appeals with lead case being ITA No.1820 of 2010 entitled The Commissioner of Income Tax -V Vs. Citi Financial Consumer Fin. Ltd. (decided on 30.03.2011). It was held that the expenditure on advertisement and sale promotion is to be treated as business expenditure allowable under Section 37 of the Act. The position, in the case was summed up as under:

> "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.
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> Re: Expenditure on account of stamping fee, direct selling expenditure and commission payment.
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> 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 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.

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.

Re: Expenditure on lease hold improvements.

18. In the assessment year 2002-03, the assessee had claimed revenue expenditure amounting to Rs. 1,52,24,029/- on account of lease hold improvements. The Assessing Officer took the view that the lease improvements were on account of

renovation carried out in the lease premises and, therefore, had to be capitalized. More so, when in the earlier year also, the assessee had capitalized the same and claimed depreciation @ 10% on it. He thus treated the aforesaid expenditure of lease hold improvements as capital expenditure and allowed depreciation @ 10%. We may note here that the said expenditure of Rs. 1,52,24,029 was incurred by the respondent on account of laying of cables, electrical connections, installation OVC conduits, CATS, Sanitary fittings, partitions & pin boards, civil works, brickwork, water proofing, flooring, false ceiling, wall finishes, toilet furnishings, paints on walls and ceilings, earthling, switches and receptacles, glazing on ventilators etc."

5. Following that judgment, this appeal is dismissed.

(A.K. SIKRI) JUDGE (M.L. MEHTA) JUDGE MAY 18, 2011 pmc