

Any artwork with life span of less than 6 months couldn't be deemed as capital expenditure.

Summary – The Mumbai ITAT in a recent case of Parle Agro (P.) Ltd., (the Assessee) held that any art work which has a life of six months or less cannot be considered as capital expenditure.

- This appeal filed by the assessee on December 10, 2010 is against the order of the Commissioner of Income-tax (Appeals)-39, Mumbai, dated August 20, 2010 for the assessment year 1998-99.
- In this appeal, assessee raised the solitary ground which reads as under :

"On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in differentiating artwork charges for short duration use and long duration use and disallowing artwork charges claimed as revenue expenditure. The Commissioner of Income-tax (Appeals) erred in upholding action of the Assessing Officer partly by treating artwork charges included in advertisement expenses, as capital expenditure, in spite of the fact, given the average lifespan of such artwork, no asset of enduring nature is acquired and accordingly it cannot be held as incurred in the capital field. The appellant submits that there is no justification in treating artwork charges as capital expenditure and prays that the same be allowed as revenue expenditure."

As per assessee, the said process of making "artworks involves creating a basic design by an ad agency as the medium in which an advertisement is to be prepared. After the basic design is approved by the assessee, the design is given a stricture based on the size and colour specifications for making the images. The images are then prepared and other mandatory details like cut-marks, bleed areas, etc., are placed in it. Thereafter, the master artwork is finally approved to be used by the printer in taking print-outs for advertisement material. The assessee also submitted to the Assessing Officer that the artwork is designed for the print media like paper advertisements, pamphlets and handbills. Thus, the assessee submitted, the artwork is just like a stencil paper or a negative of a photograph and the artwork is then used for taking copies of the artwork for use in paper advertisement, pamphlets and handbills, etc. Thus, after the "artworks" once used, normally they are thrown away after their use as the same is no longer reused by the same customer. Of course, some customers repeat the orders and in any case the life of such "artworks" is less than six months.

- Regarding the technology involved in transmitting artwork into final advertisement, the assessee submitted to the Assessing Officer that offset printing is widely used technique, where

the artwork is transferred to printing surface like rubber blanket, plates, etc. This type of printing is generally used for printing high volume printouts like handbills, pamphlet. On the enduring nature of the issue, the submissions of the assessee have given in para 8 of the impugned order which are as under :

"In response the assessee replied to the Assessing Officer that before releasing an advertisement, the artwork has to be handed over to the printer to make a copy of the artwork material. The assessee replied that sometime the artwork is used only for special events like diwali or cricket events or new year and hence the artwork has a one time use. Sometimes, the artwork is used for some sales promotion even which will be valid for a particular period of the year and hence the said artwork will have no use once the sale promotion period is over. The assessee replied to the Assessing Officer that the artwork containing the advertisement material will have to be revised based on the marketing strategy adopted by competitors. The assessee further replied to the Assessing Officer that the artwork is in the form of card paper and hence has got a very limited use of only a few occasions and cannot give advantage of an enduring nature. The assessee further submitted to the Assessing Officer that although a bromide or an artwork can be prepared whereby the life is better than that of card paper artwork, but the said bromide also has no use because the artwork meant for diwali or new year even if converted into a bromide, cannot have a repetitive use. Further, the artwork keeps on changing as per the company's marketing strategy and hence even if the artwork is converted into bromide it has really no advantage of an enduring nature."

- The above submissions of the assessee were not accepted by the Assessing Officer for the reason that the artwork is prepared in the form of card paper which is re-usable value. He accordingly observed that though the artwork is in the form of card paper, it can be converted into bromide. In that case, it will have a longer life with enduring advantages. He accordingly held that the said expenditure as capital in nature. The matter travelled to the first appellate authority.
- During the proceedings before the Commissioner of Income-tax (Appeals), the assessee reiterated the submissions made before the Assessing Officer and mentioned that the artwork does not have enduring benefit as the life of the said artwork is lesser than six months and he furnished a break-up of the artwork and other expenses. The Commissioner of Income-tax (Appeals) segregated the said artworks made for special occasions with reusable value and usable only for a short period. On this basis, the Commissioner of Income-tax (Appeals) held certain artworks are made for special occasions which can be used only once or for a very short period worked out to Rs. 4,58,425 and rest of the amount, i.e., (Rs. 6,11,234 Rs.4,58,425) Rs. 1,52,809 is confirmed and granted depreciation on the confirmed portion of the addition.
- Before us, learned counsel read out the relevant facts and the submissions of the assessee and the reasoning given by the Assessing Officer for making addition and finally the logic basing on

which the Commissioner of Income-tax (Appeals) granted substantial relief and confirming the amount of Rs. 1,52,809, which is the subject-matter of litigation now. In this regard, learned counsel mentioned that the criteria adopted by the Commissioner of Income-tax (Appeals), i.e., "certain artworks for special occasions which can be used only once or for a short period" is completely artificial in nature. The Commissioner of Income-tax (Appeals) ignored the fact that the maximum life of an artwork made on a card paper is six months which is not disputed by the Revenue. In such case, the longest life of an artwork is less than six weeks. In such case, no artwork can be considered capital in nature.

- After having heard both sides of argument, the ITAT held that it is an admitted fact that similar claim of the assessee was allowed in the past by the Revenue without making additions. It is only in this year, based on artificial criteria, this expenditure was considered as capital in nature. The criteria adopted by the Commissioner of Income-tax (Appeals), in our opinion, is not proper and any artwork which has a life of six months or less, by no reasoning, can be considered as capital expenditure. Considering the average life span of such artwork, which is only less than six months, it cannot be inferred that any capital apparatus has come into existence which can be the source of income generation for the assessee. It is not justifiable that the "artworks" fall in the capital field. Accordingly, we direct for deleting the addition of Rs. 1,52,809 and allow the ground raised by the assessee.